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Sheriffs & jailors N^o. 1. Sheriffs

The Ward Sheriff denotes the governor or keeper of the shire or County 1 Bl 339. 343. 4 Bac abr 430

The mode of appointing sheriffs in Eng^d & here is very diff^t & diff^t in diff^t states — In this state he is now appointed for three years by the legislature In Eng^d he is appointed by the king annually
Bac abr: Shffs. 1 Bl 340-1

The Sheriff must ~~abide~~ ^{reside} in the County for wh^{ch} he is appointed because he is a county officer & has no original jurisdiction out of his county
4 Bac 435 Tit Shffs

But where it is nec^y to go out of his own county to complete an official act begun in his own county his authority extends out of his own County. As if the Sheriff of A is commanded to deliver a prisoner to Court in B. he has authority to carry him to B. for every official act is deemed in law an entire act & the completion has reference to the inception. 4 Bac 435. Sher 3

If a prisoner escapes the Sheriff may pursue & take him in another county. he could not go out of his county to make the original arrest. (Ob/ Plow 37. Bac abr Sher 3)

His authority in some cases may extend beyond the duration of his office where it is nec^y that it should be so continued. viz to complete an act begun during his office. & he must complete the act begun — for the execution of legal process is an entire indivisible act. & the completion has reference to the inception. (Ob/ Plow 37. Salk 323 Bro I 73. 557. 1 Roll 8934)

And it makes no difference in this case whether his auth^y expires by its own limitation or whether he is turned out of the office.

(10)

Appointment &c of Deputies,

• A case of great celerity arose in N. York wh^t was decided contrary to law -

✓ The same rule holds as ^{to constable} within the limits of their particular jurisdiction.

✓ The shff may at common law appoint deputies who are his representatives or substitutes & who as such have authority to execute all the ^{ordinary} ministerial duties of the shff's office. Hob 13. Kib 240. 4 Bac 437; ^{See 41} Shff's acts in law one

✓ By a st. provision of this state a shff of one county may be appointed a Deputy of the shff of another county & then the shff so appointed may act as deputy in one county & as shff in the other.

✓ The Deputy is removable at the pleasure of the shff. But while the deputy is permitted to remain in office his legal powers cannot be abridged or removed by the shff - Salk 95. Hob 13. 4 Bac 437. For while the certain case Depy is in office he is bound by an auth^r param^t to the shff to execute his duties - [dep^y shff.]

✓ Shffs sometimes have induced Deputies to sign a contract that they would not execute process over a certain amt. to every such agree^m is void. for a Deputy may not by any contract bind himself not to execute any of his official duties. (M) Hob 14. Bac 42

✓ In Engl^t the Depy always acts officially only in the name of the shff never in his own name - for the Depy is not at common law a known public officer hence writs are never directed to a Deputy - Salk 96. Bow 65. Bac 41

✓ And this is the meaning of the rule that an under shff cannot return a writ. i.e. he cannot return a writ in his own name. (Bow 65.) The endorsement must be made in the name of shff

But in this state by st. a Dep'y may & does act in his own name. He is hence a known public officer & writs may be directed to him & usually are so.
 "etc of Const'c' A'ction, civil"

Yet even here a writ directed only to the Sheriff may be executed & returned by a Dep'y either general or special. Art 237

A Dep'y may not delegate his authy by appointing a sub-Deputy. A representative must act in his own person & never by proxy. This is a principle of Common & Constitutional law - Upon this principle a peer votes by proxy in England but a member of the house of commons cannot.

Yet a Dep'y may lawfully command the assistance of a third person in the performance of his official duty. He may empower another person as an assistant to act in his company or presence. for here is no assignment of authority. Talk q6. 1st Bac' Shif' p 442

If a Sheriff directs a warrant to two persons either of them alone may execute the warrant. for the authy being of a public nature is several. 6o Citt 181. Stra 117. 4 Bac 403 note 2. 442.

There is a distinction in this respect between a public & private authority. thus if a man gives a power of attorney to B & C to sell his property neither B nor C can alone sell the property &

Shff considered as keeper of the com. jail.

If a Deputy is guilty of any neglect of duty, the Shff may maintain an action on the case agt him because an action may be bro't agt the Shff by the injured party for the neglect of the deputy. & there is always an implied or express contract on the part of the Deputy to perform faithfully his duty - 1 Roll 95

4 Bac 442 (The Shff may immediately bring this action)

The usual remedy for the Shff is an action on his bond -

The Shff is ex officio keeper of the com. jail in his county. by common jail is meant the jail required by the common law.

The jailor is therefore a sort of under Shff appointed & removable by the Shff (late, therefore concerning himself to meas) 4 Co 34 of St 119. + Bac 443.

And the Shff has regularly no right to confine his prisoners in any other place than in the common jail unless expressly authorized by Statute

If there's no Shff - confining a prisoner in any other place than the common jail unless authorized by express statute he is liable for false imprisonment Hob 202 Latch 16. 1 Siderfin 313. Salk 408. 5 Bac 171. sit breshaft.

Now in this state with the exception of New York there is but one jail in each county.

If however the common jail destroyed by accident or if from any cause there is no common jail in the County the Shff may constitute his own house or any other building a pro tempore jail. for it (ie next page) is the Shfs duty to provide a jail - Hatch 10

In this state when a county is destitute of a jail persons in that county liable to be imprisoned may by lawful authority be sent to the common jail of the next adjoining County. St C. 3d 42. s 22 -

The shff himself cannot in this state be imprisoned at all in his own county on a civil action for he is keeper of the com. jail and may do what he pleases with it - If therefore the Shff is arrested the arrest is void for he is keeper of the jail & therefore cannot be imprisoned. Rul 48. and also decided that the writ will abate: This rule does not prevent a Shff from being arrested in another County.

In Rul 48 It was decided that if the Shff was arrested in civil process the writ must abate. But I b. think this wrong. for a copy of suit to hold him to trial - (in post).

Where a Shff is arrested for a crime the rule of the common law is that he may be committed to a prison out of his own county tho' taken in his own county (ex excipitale rei) 3 Leon 394 Hatch 16. 1 Mod 178.

In the st of New York it has been decided that if a Shff is arrested by a coroner the coroner must imprison him in the coroner's house. John 22-

This rule was adopted in analogy to the case of a Shff who makes an arrest when there is no jail in the County, & then he has no authority to constitute his own house as a prison

But a coroner has no authority to make a jail when there is none - Hatch 16

But by the common law ^{in more respects} a shiff may be arrested in a civil suit, in his own county, but he may be discharged on fictitious bail. 6 John 24. On account of this rule the decision in Knib. *pros. ante* is doubtful. He ought to be discharged without any bail for fictitious bail is unknown here.

He may certainly be held to trial here as well as elsewhere — the proper course here would be to leave a copy of the writ with the shiff and that w^t hold him to trial —

The shiff is liable for many of the acts and defaults of the shiff, i.e. the official acts & and defaults. *qui facit per alium facit per se* — 4 Co. 98. 2 Leo. 158. 1 Ventr. 314. 56089. 1 Roll 94. The shiff is liable when the act or default of the deputy is in law the act or default of the shiff. It is a consequence of this liability that the shiff is entitled to take security from the deputies for the faithful discharge of their duty. *Stiley 18. 4 Bac. 441.*

The official acts of the deputy are to all civil purposes the acts of the shiff, and the official defaults of the deputy are civil to the defaults of the shiff. But never criminaliter. The crimes of one man can never be imputed to another.

The same principle holds in the case of master & servant etc. 2 Ed. Raym. 1574. Doug 42. 2 Roll 154. Hatch 187. 1 Ventr. 238. Bro. Jac. 330.

Liability of Shiff for the dep^{ty}

But for the private acts of the dep^{ty} unconnected (15)
with his official acts the Shiff is not liable.

And this is the principle which is acknowledged
in the case of master & servant &c.

61o & 175. 1 Econ² 146. 1 Roll 94.

In consequence of this latter rule it has been
doubted whether if the dep^{ty} leaves an ex^ct on the
goods of B when the ex^ct is act^ct the Shiff is liable.

But at present it is settled that the Shiff is liable
for the dep^{ty} here acts officially. 3^o Wilson 309
2 Bl Rep 832. Doug 42. 4 Bac Htl. Nov 27. 2 Kel 352.

And it has been decided in this precise
case that the Shiff is liable to B for trespass in et
arms. but this is a departure from the gen^ce
rule. the action in such case is usually trespass
on the case. Doug 42. 2 Bl R 832. 4 (2) Kel 352.

Nov 27. The reason assigned is an artificial
one viz that the Shiff & his dep^{ty} are considered only
one person. 2 Kel 352. 2 Bl C 834. In the case of
Master & servant the Master would be liable only in
case

For any defect of official duty on the
part of a dep^{ty}. the Shiff & he may be liable to the
person injured & the Shiff has an immediate action
agt the dep^{ty} Cow 403. 406. Sack 18. 5 Bo 84
Rep 833. 1 Roll 94. 4 Bac 443.

The reason of this rule is that as the dep^{ty}
is not a known public officer no action can be
maintained agt him as a dep^{ty}.

The rule would be the same in case
of neglect of duty by the dep^{ty}. the Shiff and he may (66)
be liable. If no dep^{ty} neglects to return a writ
for the writ not being directed to the dep^{ty} the writ does
not show that the dep^{ty} was bound to return it.

Liability of Shiffs for their Dep^w

(16)

But for a positive tort committed by the Dep^w both Sheriff & Shiff are liable for the same ^{under colour of his office} as the Dep^w as ^{as} a stranger and is not founded on the master. If a Dep^w break the outer door or window of a house both Dep^w & Shiff are liable

1. Dick 10 Sep^d 175. 693 Bro 3 175. 763
Bro 3 100. 330. 3 Dec 258. 1 East 106. 3 Lev 258. - i.e. qua for
negligent escape by the Dep^w Shiff alone is liable ~~as well as Dep^w~~

For the defaults & neglects of a special Dep^w appointed at the request of the Shiff in a case & on the nomination of the Shiff the Shiff is not liable to the Shiff in the process. 4 T.R. 120. Esp^d 607

In this state however a Dep^w is liable as well for neglect of duty as for positive torts for he is here a known public officer by Statute But this liability of the Dep^w does not exempt the high Shiff - either are liable at the election of the injured party

All the above rules relating to the liability of the Shiff for his Deputy apply to the jailor. For jailors are deputies for the purpose of keeping the prison.

If a Shiff dies & after his death the prisoners ~~in~~ ^{at} the jail escape before another Shiff is appointed no one is liable if no one assists them in escaping. 3 6072. Bro 3 366
4 Bac 445. For the death of the Shiff ipso facto revokes the authority of the jailor.

and the only remedy in this case is recaution
by the Sheriff next appointed. Titled 14. H.Bac 4615

But suppose during such an interregnum
the jailor merely omits to enlarge his prisoners. Is
he guilty of false imprisonment? certainly not, for
he cannot be obliged to enlarge them, and indeed
he has no authority to enlarge them.

The Authority & Duty of Shiffs & of deputys
By the com: Law the Sheriff is a judicial
officer as well as ministerial &c 1 Bl 343. 4 Bac. 448; q.

In this state the authority of Sheriff is
merely executive & ministerial.

As conservator of the peace he is an
ministerial off. executive officer?

A ministerial off: is one who executes
the law in obedience to ^{the command of some superior officer} some other authority

An Executive off: is one who
executes the law in obedience to the law
itself & not to any other authority

The Sheriff as conservator of the peace
is said to be the highest executive officer of
the county 1 Bl 343. 1 Keb 237. if he is the
highest executive County officer.

Duty of the Sheriff as an executive officer

(18)

1. At com. law without precept as an executive off: without any warrant he may apprehend those who break the peace, & bind them to keep the peace. - In bunt he cannot bind to the peace.

2. He is bound to apprehend traitors felons & all high offenders and to imprison them.

3. He is bound to defend his county from invasion & from enemies abroad as well as from insurrection to 1 Bl. 343. 6o Selle 168. 14 Bac 430.

and for these purposes he has authority to command the pope comitatus to assist him. He is in this state empowered by Statute to do those things which he is required to do by the common law.

He may here command the assistance of all of age & ability within his own County.

Constables within their limits have the same power.

As a ministerial Off he is bound to execute all ^{legal} procs properly directed to him & if he neglects this duty he is liable to imprisonment &c. and also to an action (1 Bl 344. Plow 74. 4 Bac 444 Dyer 60.) on the case in favour of the person injured by the neglect. He is liable in Bon. to an action on the case for not returning a writ whether it is executed or not.

In Engl^t in such case a summary ^{same might be} remedy is obtained. Doug 446. 2 H Rl 233. 3 Bl 291 done in court Esp^t Reg 616. in a rule is made for him to return it and if he neglects he is proceeded ag^t by attachment & find the Shiff or his deputy may as a ministerial Off command the peace comitatus when resistance is made or expected

4 Bac 453

In this state he has the same power and with the advice of ^{the} justice of the peace & in such cases he may call out the whole militia in an organized body & take the command Tit "Shiff" St Bonn.

et Shiff or Deputy may ^{holding house} break the outer door or window of a dwelling house to arrest him or seize his goods on any civil procs.

The foundations of this rule is to be sought for in feudal customs 5 Co 91:26 Cowt. 1. 2 ro 8 909. 4 Co 62. Esp^t Reg 604. Kiel 553.

It is said that if the Shiff were permitted to break open the dwelling house it w^t be exposed to thievery. & by the stat of Bonn! Shiff is bound to give a written receipt for every writ d^r to him (if required) and if he refuses he is liable

Breaking outer doors &c.

20)

It was formerly held that where the outer door &c was broken in a civil case the execution was good but the Offender liable for trespass
5 Geo 32 6 Tollap 155.

But the modern practice is to discharge a person arrested in this manner in a summary way by motion & thus suppose the execution of the process to be void. still the Ct may use their discretion in such case - Bow 1. 2 Bl & 2 323

p Bac 367. 4 So 454 note 554. If the person arrested had been guilty of any misconduct the Ct w^t not grant this summary relief! Of the party arrested cannot obtain relief by motion he may have recourse to his writ of Habemus corpus wh^t is strictius & cannot be denied.

What is legally necessary to constitute a breaking?

To constitute a breaking in this case there must be a violent breaking of some fastening intended as a protection. There must be some violence such as involves a breach of the peace. There is no precise law however which defines breaking. (In the law of burglary the lifting of a latch is suff. to constitute a breaking.)

This breaking is construed strictly agt the person to be arrested. & in favour of the thief.

and when the thief has lawfully gained admission into the house on refusal of peaceable admission into the inner rooms he may break the inner doors & chests &c. but he must not do this wantonly Bow 6.7 Hob 62. 263 Exp 604 605. Com 17. 327 Bow 4.

Breaking outer door

The privilege of castle extends only to
the person who resides in the house. If
A takes refuge in the house of B & the shff
has an exⁿ or civil process agt A. in this case
on request for admission by the shff he may on refusal
break the doors windows etc Hob. 62. 5 Co. 93 b.
1 Sidw 186. 4 Bac 425. same if A's goods are in
the house of B.

Laws of justice in latter times have restrained
this privilege as far as possible. and it has been long
questioned in these states whether (Law 7.) it ought to be
allowed at all. but it is allowed in some as in Eng.

On criminal process this privilege is
not allowed. tho' the shff even in this case
may not unnecessarily break doors windows etc
5 Co. 91. 4 Bac 454.

On a process to compel a person to
find surety for keeping the peace - after demand of admission
the shff may break etc - 12 C. 131. 4 Bac 454

The rule is the same on forcible entry
or detainer. (Ib) for the outer or the east
process is a criminal process.

If a person having committed felony
is pursued with or without warrant & by a public
or private person his house may be broken. 4 Bac 455
2 Hau 139.

But if he is not proved to have
committed felony. the person thus acting without
warrant may afterwards be sued in trespass & recovery
had against him (27)

Breaking outer doors &c.

(22) One's dwelling house may also be broken to suppress an affray or to prevent it
+ Bac 406 If one has created an affray & is pursued either with or without
456 warrant to his (1 Root 66) own house the house may
be forcibly entered - This last we need only an ~~civil~~
In a writ of Habere facias processum
theiff may break doors &c tho' this is a civil
process. & this is the only exception in favour
of a civil process. H 60 91 b. H Bac 455. for the
very object of the writ is to give procession of the
house and there is no mode of executing it without
breaking the house if it is fastened. But the
breaking in this case is not the breaking of the
dwelling house of the Dft for the judgment by all
the executors decides the house to be the house
of the Dft.

(29.)

(24)

Sheriffs & Sailors, Dec^r 22^o 1824. No 2.

On civil process the door of a barn or outhouse ^{not} joining the mansion house may be lawfully broken tho' in the law of burglary it is diff't

1 R. 695. 1 Sidw 16. 4 Bac 455.

The rule is the same with regard to ^{+ this rule supp} a store tho' a diff' opinion formerly prevailed in the state to be part of the man. house. and that they state. At present it is the practice to break open stores tho' there has been no direct decision on the point.

If a shiff's Bailli attending the shiff lawfully enters the mansion-house ^{and is confined within} the shiff may freely enter the house to search the bailli, & bring in the person or attack his goods. ^{the owner do not lodge in} Bro Jac 555. Palm 52 4 Bac 456

What if a person once arrested on civil process escapes to his house the shiff may then if necessary break into his house to retake him & this is always the case in escapes Palm. 54. 1 Roll's R 135 4 Bac 456. for the original arrest attaches in the shiff a right to the custody of the deft. ~~285~~

If a person illegally arrested by the breaking of the ^{while he is in custody on another suit by another officer} is afterwards arrested on another process the last arrest is good unless some collusion between the officers - secus if collusion (ag: 2 Bl R 823) Esp' Lig 605.

By St 29 Bar 2. No civil process may be executed on Sunday & if so it is void. we in Bonn have a similar statute. The Off in such case is liable for false imprisonment -

1 R. 695. 4 Bac 456. 656

This is not a rule of the C. - If the off: on Sunday seizes goods he is liable in trespass. If he arrests the person he is liable in false imprisonment.

In this state diff^r opinions prevail'd as to the meaning of sunday, but now it is settled that sunday now includes only the day light of the first day of the week. ^{See Bon Rep 5241}
 Fox & Abel — ^(See 2d, vide Stat Count Ed of 1821)

But this stat rule applies only to original arrests. — A prisoner who escapes may be retaken on sunday, for tho' the st makes no such exception yet such is the reasonable construction
 5 T R 25. Salk 626. 6 mod 95.

2 Ed Raym 1028. Codd 253.

For the reason of this exception is that the recaution is only a means of continuing the Off's prior custody. The Off has the same right to take a prisoner as to resist his escape. He undoubtless, may assist his escape on sunday,

In case of an illegal arrest the b^t ^{may} discharge the prisoner on motion.

6 mod 95. 4 Bac 456 + 5 1 cd. 95

And if the b^t should refuse his motion he has remedy by "Habeas corpus" or if the b^t is not in session —

1833

1807

24

Doctrine of escapes.

An escape is an unlawful evasion of legal restraint or custody, 2 Bac 233. Tit Escape.

When therefore a person being under a lawful arrest evades that restraint either violently or clandestinely or is suffered to go at large before released by law, the party escaping is guilty of a wrong either civil or public according to the nature of the arrest -

(Abt.) If the process on which he is arrested is a civil process his escape is a civil wrong; if the process is criminal the escape is a public wrong.

It is essential then to an escape in law ~~that~~ ^{of} there be a previous legal arrest -

2d p^r Dig 607:8:9 Bow 65

An arrest to be lawful must be made in pursuance of lawful authority.

But a lawful authority to make an arrest may exist without writ or warrant. (Abt.) 2d p^r Bow 455.

As to lawful arrest without writ or warrant see Tit "False imprisonment"

When the arrest is made by virtue of a writ or warrant the general rule respecting its legality at common law is this.

If the officer who issues the writ has jurisdiction of the subject matter in the case & the process itself is regular, the arrest under it is lawful & the evasion of such arrest is an escape -

If there is no objection to the legality of the process that the process is erroneous -

2 Wilson 3824. 8 Be 141 b. 5 Co 644. Str 509
Espe. Dig 333. 391. 659.

This rule presupposes that the mode of making the arrest is lawful. It goes no further than to the question of authority.

If the b^t issuing the process has not jurisdiction of the subject matter or if the process is irregular the arrest under it is unlawful & in this case in law there is no escape. ^{See} Escape a. p 234 Esp Dig 608 q. By subject matter is meant the alleged offence.

In this state unless the defect of the b^t jurisdiction appears on the face of the process the off is justified tho' the arrest is void. ^{on the} Eng this distinction is not made -- Habib 10. 182.

If the arrest is on mean process & is lawful the prisoner's going at large is no escape provided he surrenders himself on the appearance day & pays in bail a sum as required by practice.

P Bl 290

Here if the prisoner is forthcoming during the life of ex^w the prisoner is going at large is no escape. The process in this case is mean process & the arrest supposed to be lawful.

In the next object of arrest on mean process is in the first place to have the diff present in b^t & to hold him in readiness to respond the judge.

By the subject matter is meant the thing in demand & the cause of complaint or action of the cause of action

Tho' the C^t has complete jurisdiction of the subject matter, the process may still be void as being irregular.

Show if a process is made returnable to any other term of the C^t than to the first term of that C^t to which by law it can be returned, the process is irregular & the arrest under it is illegal. The process is utterly void not voidable. It is irregular not erroneous.

3 Wilson 341. 2 Clark 275. 2 H. & J. 608: q. Barth 148
Bro. & 148. Esp. Dig 328: q.

A void process or irregular is a nullity from the beginning but erroneous or voidable process is good until & unless it is avoided in due course of law.

Any arrest made under an erroneous process will justify the Sheriff. But he is not justified in making an arrest under an irregular process.

In this state mean process is not usually issued by the C^t till the note is returnable. Therefore the genl rule of the common law will not apply.

As to mean process the rule in Conn should be thus expressed

If the process issues from competent authority & is returnable to a C^t having jurisdiction of the subject matter, the process is good & arrest under it good, supposing the process regular.

at commⁿ: law an Off having made
an arrest on final pro esp cannot delegate
to a third person ^{no tro. by law} authority to keep the
prisoner, & the Shff & person detaining the
prisoner in such circumstances are guilty of
false imprisonment ^{same in case of mⁿ} 1. B. & P. 24
(and this also is an escape in the officer, even in mⁿ)

The technical reason of this rule is
that the prisoner in hands of the third
person is not in custody of the law & is not
in the custody of lawful authority for
the Shff cannot delegate his auth^r.

The rule may also be founded on the
extreme rigour with wh^t the law looks upon all
abstain^t of liberty. —

This rule is not very much regarded
in practice in Conn: & it is a matter of some doubt
what a Ct would do if an Off were sued for false
imprisⁿ in such case.

The second requisite to an arrest in
law is that the arrest be actual.

esp^r Dig 604.

Bare words will never amount to an
arrest. There must be an actual touching of
the person to be arrested or something tantam^t
to it. If the Off. says "I arrest you" requires
him to follow him (the Off.) the obeying of the
party arrested is tantamount to touching his person.

Spar 236. Nalk 74. 186. Ball. 1. p 62

esp^r Dig. 604. Or if the Off. has the dft in his
power & the dft subjective to the authority of the Off. this
is considered tantamount to touching the person of the dft.

If an arrest is made under an act
in favour of A & a writ is handed to the Shff
in favour of B while the person arrested in the
custody of the Shff he is deemed in law to be
arrested on the writ of B without the formality of
touching the person on the second writ 5 Bac 54. Salk 23^r.

2 Bac 1st escape p 236. The Shff therefore may be guilty of an escape
on both processes) But this rule does not hold in
every case if the Shff may take on the Ex^t the goods
& the left he may not choose to arrest the body of the
left on the second act & therefore I think the rule holds
only when the second act is carried satisfac: on which
nothing but the person of the left may be taken.
he don't probably therefore the rule does not hold at all.

3^o Requisite.

The arrest to be effectual must be
regularly & legally made & if not there can be
no escape. — Thus in a civil cause there must
be a warrant or the arrest is irregular (this refers
to an original arrest) Cow 64 Es^t Dig 604. 2 Bac 236

It must be made by authority of the
Off to whom the writ is directed. it must be
actually made by the Off himself or by some one
in comp^y with the Shff under his direction

By being in comp^y of the Shff means only
that the Off is near his absent^t & in pursuit of
the same object. Cow 65^t Esp^t Dig 604. Colloq 211

An arrest on Sunday is not regular & there is no escape if the Off permit the Dr to go at large Collo 95.
Talk 75. Esp. Dig 605.

The case is the same when the arrest is made by unlawfully breaking an outer door window &c. of the Dr's dwelling house - Corr 9

If an Off with in attack^t to his aw opportunity to arrest him & neglects to arrest him & the Dr eventually is not arrested the Off is liable on the case not for suffering an escape but for neglect of duty.

Collo 23:4 10 & 251:5

Ld Raym 331 1 Day 128. Fort & Dougall,

760 69
80 1485
122 157
Esp. Dig 604.

If an Off exercising a gen'l authority makes an arrest he is not bound previous to the arrest to show the proepry to the Drt not even if he is required to do so by the Drt

For it might be attended with hazard by giving the Drt an opportunity to escape

But after the arrest within a reasonable time he must produce his proepr.

But where a special Depy or a bailiff makes an arrest he must if required show his proceps. & if he fails to do so the Dft may resist the arrest with any necessary violence.

But if the proceps is not demanded he need not volunteer to discover his proceps.

q. b. 69. Bro. Ias 485. Esp. Dig 602
S. Tr. 187. 4 Bac 452.

Escapes are voluntary or negligent.

3 Bo 52. 3 Bl 415.

A voluntary escape is one which takes place with the consent of the Off. having the custody of the prisoner.

A neg^t escape is one wh^t takes place without the consent ^{of the} of having the custody of the prisoner. 3 Bl 415.

Every person committed to prison is to be kept in safe & close custody till delivered by due course of law. (But by due course is not meant confinement within the walls) If therefore if the sh^t permits a prisoner once committed to leave the limits of the prison-gard but for a moment he is guilty of an escape-- 3 Bo 444. 1 Roll 86.

3 Bl 415. Ploud 36. "Speculum" B. 1.

But by close custody is not necessarily meant that the prisoner be confined to the walls of the prison. He is in close custody while in the limits of the prison-yard.

Voluntary escape

If aiff he admits to bail a prisⁿ not bailable by law he is guilty of voluntary escape.

If he permits the prisoner to go at large from the prison even with a keeper he is guilty of voluntary escape. 3 Co. 44
1 Roll 816. Plow 36. 2 Bac 237.

Where the prisoner has been actually committed these rules hold with any reference to the nature of the prifff whether mesne or final

and if a person is merely arrested on final prifff the rule is the same
2 T. R. 176. 1 B. & P. 26.

qualified in count by Stat. port 37.

Prisoners committed on criminal prifff are to be confined within the walls

These arrested on civil prifff may by procuring security to save the iff harmly be permitted to enjoy the liberties of the prison-yard 2 T. R. 126. 131.

It was once decided in Eng^t that if a pris^r committed on Ex^r is brought out by a ^{from a} ^{by} court of competent jurisdiction to testify the shff is liable for voluntary escape. 1 Sid^r 13. 2 Bac 238:9

of rule of this kind could not long be considered law. Bal^r 1 P^r 2 1 Root 72
Kib 137.

But if the off who brings out a pris^r on Hab^r car^r grants him unreasonable liberty he is guilty of voluntary escape

The shff must bring his pris^r to st in reasonable time & by the most exp^t route.

Id Raym 241. 399. 785. 3 Reb 305.
6 mod 78. Bro Bart^r.

If an off makes an arrest on final procs he must commit his pris^r within reasonable time or he is guilty of a voluntary escape

He must not permit him to go at large with a keeper &c. He must not take his word that he will deliver himself in a day hour &c

1 B^r 1 P^r 24. 232 176.

A shff has no right to discharge a pris^r committed on Ex^r even on payt to ^{before the shff}
himself of the contents of the Ex^r ^{has committed}

for the shff is not the plff's att^r. the prisoner he is

Bro Eliz 404. 1 mod 494. 8 Jl. 225. 366. ^{as to him first}

2 Bac 241. 14 East 468. Id Raym 399. 12 mod 214 (p^ro.)

even if the shff was the off who ^{in intent}
held the Ex^r & committed the pris^r the rule is the same. In such case however if the shff accepts the money on the Ex^r from the shff before he has brought an action for escape the shff cannot afterwards sue the shff. (B)

(35)

If an ~~an~~ ^{an} act ^{act} of the body only
of a ~~left~~ left the Shff having merely arrested
the left discharges him on receiving the
amt of the ~~car~~ the Shff is liable for
voluntary escape if the Shff receives the money however he
waives his right of action but if the ~~car~~ was a ^a good
c. The rule is diff

The same qualification prevails here
as in the former rule : "If the Shff accepts &c"

14 East 468. Id Raym 399

12 Mod 214.

If a Shff marries a woman
committed on her he is ipso facto guilty
of a voluntary escape. Plon 17. 2 Bar 239
for he is bound as her husband to discharge her

If the Shff appoints one of his
prisoners turn-key of the jail he is ipso
facto guilty of an escape. Hardas 311.
Ex parte Big 608. He is guilty of a voluntary escape
only quoad the prisonel thus made turn-key.

If a pris^t having the rights of
the prison gard manifests a disposition to
escape. It is the duty of the Shff to
convey the pris^t to the warden & if he does
not so do the Shff is guilty of voluntary
escape. 27 & 131. 1 Root 106. 137 & 8. 1 Tw D 544. 2 Conn 477

If therefore a prisoner once transgrees the
limits of the jail gard. and the Shff has notice
of it & he does not confine the prisoner and the
prisoner escapes the Shff is guilty of voluntary escape.

But if a prisoner having the rights escape before he
has manifested such a disposition or before it is
known to the officer the Shff is guilty only of a ~~left~~
escape (86)

H. of Const.
tit 42. 88.

But a Shff is not bound at com:
law to grant the liberties of the prison yard
in any case whatever. however ample the
security offered. But he may lawfully
grant the liberties to one committed on
civil proe^cp. & if the pris: escape the Shff
is not liable for a voluntary escape but only
for a negligent escape - 27 C 131.

And after he has granted the liberties
of the yard he, may at his discretion
recommit the pris: to close confinement.
(Bt This is the old rule - but it must be qualified
under our law - here he must show some cause.

But by a recent st of Conn the ^{act 34,}
Shff is bound on sufft security offered
to permit a prisoner committed on civil proe^cp to
enjoy the liberty of the yard. It Conn Stat 42. 58.)

The County Ct's in this state have
auth^t to order into close confinement
a prisoner committed on civil proe^cp unless
the proe^cp issued from the superior Ct.

& if the proe^cp issued from the sup:
Ct that Ct has the same power. —

Negligent escapes

Any escape ~~ag^t~~ the consent of the Off is a negligent escape. If a person lawfully arrested evades his restraint by fleeing from the off or by violence the escape on the part of the off is negligent. so if a pris committed escape by breaking the walls to.

An escape by rescue is a negt escape

3 Bl 416. Bro. Dec 419. Fitz. ch. B. 130

And when an action for escape is brought ag^t an off: his endorsement whatever it be is suff evidence that the writ was delivered to him. -
baw 63:5

There is a diff: between escape on final & on some procs. & between the consequences of the one & the other.

If a person arrested on final procs is permitted to go at large even for a moment the off is liable for ~~negl~~^{voluntary} escape 2 & 2 172 3 Bl 415 Esp. Diz 605:6

2 T.R. 172 in final procs permits him to go at large for a given time on a security that he shall be surrendered him at a future time. the security is void. the off is guilty of voluntary escape & if the pris is afterwards surrendered & the off commits him he is guilty of false imprisonment. for after the off has been guilty of voluntary escape he has no right to make an arrest again on the warrant.

It has been decided (2 Root 133) in Conn
that such ^{bond} ~~Security~~ is good, but this is an old decision 2 Root 155.
& probably would not now be considered law.

But if the arrest is on ~~measur~~
process the prisoner may go at large without
subjecting the off^t if he is forthcoming on the
return of the writ. & in this state of the law
forthcoming before the return of the conⁿ 2 Bl. L. Salk 408
1049. 3 Bl. L. 415. 27 R. 172. 5 Bl. 37. 2 Wilson 295
for Conn. Kilk 209. 382. 434. This rule suppos^s
that the person arrested has not been committed. ante 34.

But if he is not thus forthcoming
the off^t then is liable for an escape to an action
on the case. But not if he is forthcoming.

The escape in this case is negligent. for
the enlargement is legal 2 Bac. escape h 240
Bro. 623. 652. 568. 2 Woodes 294. Esp^t 2, 609
2 Wilson 294.

But if a person arrested on measur
process is committed allowing him to
go at large subjects the off^t to an escape
when the off^t enlarges him before
commitment he is supposed to do it on
bail. But he may not take bail after
commitment 2 Wilson 294/1. 8-6 607
Esp^t 2, 609. Wait 271. 2 Wils 294 or 294.

We have a st requiring the off^t
to take bail after commitment on measur
process.

By st there is a common rule in
Eng^t: (23 Hanc^t). 1. 4 Bl. 174
1 Bl. 2, 2nd & 3^d 'bail'

(40)

Where the p^tff after escape on mesne
proces proceed, to suit it is no waiver
of his right to proceed ag^t the shff, for
escape — 2 Wil 294. for the right of
action is complete on the enlargement by the shff
or jailor. —

Sheriffs & Sailors Dec 24th 1824 A. 73.

If one arrested on meane pro cap
escape the Shff has no action against him as
well as the Plff agt the Shff & both actions
are trespass on the case 2 Bur 245 "Escape"

But in this case the damages to be
recovered by the Shff are presumptive & cannot
be recovered wth the Plff, shows that he
had a legal claim agt the party escaping
2 Mil 295. 2 Str 129. 2 Wler 85. 4 Str 611.
5 Str 40:1. 2 Stra 873. Esp. Dig 609.

And in no case of this kind can the
Plff in the pro cap record of the Shff more than
his claim agt the party escaping 1 Johns 2 215

In the Plff's action agt the Shff
in such case an acknowledgement of the
escaping of his debt due is good agt the Shff.
1 Esp. Rep 109. Peake R 65. 4 Str 436.

The principle of this rule of evidence
is in the Plff's action agt the party escaping
himself thus acknowledgement would be
good agt the party escaping but by the
fault of the Shff the Plff has lost his
opportunity to take advantage of this
acknowledgment agt the party escaping he ought
therefore to be allowed to take advantage of it agt the Shff.

For an escape on final process the plff has his election of two remedies viz an action on the case or an action on the St. of Westminster & Sc. of debt agt the Dft. 2 H. Bl. 110:13. 2 T.R. 129 132. Stra. 153. Esp. Dig. 203. By the St. 1 Richards 2^o the same action of debt is given.

These are prima facie the law of this Country.

When it's extend to escapes before commitment as well as after commitment on final process. But there is this difference between the two actions.

If the plff's action is "case" he sue for presumptive damages & the jury may give what damages they please not exceeding the claim of the plff on the process. 2 T.R. 129.

Esp. Dig. 60. If he brings debt he sue for the precise sum of the esc. (Bye abr "Escape" f) and the jury are bound to give that amt. It follows from this rule that the party escaping is a competent witness agt the Dft in this action on the case for recovery agt the Dft does not discharge the waives from his debt. Peaks Br. 171:2 Peake's R. 124. 2 T.R. 129.

One of the Books except the rule thus if the jury only assess special damages agt the Dft the plff may still recover agt the escaper. 2 T.R. 129. 2 Wils 295 Bul. V. S. C. Esp. Dig. 61.

But if the jury should assess the whole
 amt agt the Shff & it thinks still the whole amt
 may be recovered agt the escape by the creditor in the
 end. Because the action agt the shff is
 not for the same cause, as the act agt the
 original debt & the rule of damages in the
 two cases is altogether diff.

5 Ch 40:1. Peak; R 124. Park; Cr 172

3 Esp^t 208. 1 Day 22.

But if the shff brings "debt" agt the
 shff the jury must give the whole sum for which
 the origl debt was charged in ex^w together with
 the costs &c. 27 R 126. 129. 132. 2 Bl R 1045.
 Esp^t Lig 609.

* And this recovery in debt agt the shff
 is a bar agt the recovery by the relief of the origl
 debt agt the escapee. (28) Once the debt is
 transferred from the creditor to the shff.

If a person arrested on mesne proce^p
 is arrested but not committed & is released the
 shff is excused. But if the person were arrested
 on final proce^p & is released the shff is not excused
 3 Bl 416. 6 ro Jac 414. 6 ro E 573. Esp^t Lig 610

* By law the jury seem to be required to give the
 whole debt in damages agt the shff where the escape
 is a voluntary escape and from prison whatever be
 the form of the action case a debt.

But when Deft is committed on mesne
hrospf. rescue is no excuse for the Shff unless
made by publice enemies. Rescue by insurgent
traitors &c is no excuse 1 Roll 808. Stra 482
160 84a. Esp^t Dig 610. (and indeed in this case
nothing but the act of God or of public enemy will excuse
the Shff) The rule is the same where the
arrest is on final proe. p whether the prisoner
has been committed or not. (Abt)
Bro abr.

Prison on the hrospf. Being invent +
confis Shff held rescued by the law not on final proe. p.
Expt. 610. But the pf on the orig proe. p
may maintain an action agt the rescuers whether
the arrest were on mesne or final proe. p.
Bro Iact 486 160 110 160 610 Hutt 98

Where the Shff is liable for the rescue
the pf may maintain action either agt the
Shff or agt the rescuers but by suing the
rescuers he waives the action agt the Shff.
No authority for this rule whl is certain.

Expt. 657: 1-512
C. 160d 211 Bro Bar 77 or 109 Hutt 98. By commanding
an action agt the rescuers the pf induces the Shff to think himself
safe) If the pf recover agt the rescuers he
plainly cannot recover agt the Shff -

stra 482 If a Shff brings up a prisoner to testify rescue is
Expt. 610 no excuse to the Shff.

Fire except by lightning is no excuse to the Shff.

The form of action and the recovery may be either trespass or case. Hobart 150 Brod 716
if we can the rule is contrary to analogy - principle

On principle the one action for the pof in the original action agt the rescuers is case
for there is no propagation of the body suff to warrant trespass. The damage too is consequential
it is not direct the violence used by the rescuer is not
directly injurious to the Def.

In an action agt the rescuer the jury
may give the whole or a part of the pof original
claim. Sept 1865; 1. § 59. Com. & 211.

esp. A. Buller say that if the jury give
one part of the original demand agt the party
named to Def may pursue his original demand
at the party named

Sept 1865. Bull. 1. 269;

But if I think trial of the jury give
the whole of the pof original demand agt
the party named still the Def may pursue his
original demand agt the party named. the two
actions are not bot far as and the same thing

the Def is a good witness agt the rescuer wh could
not be if he were discharged by a recovery.

In an action agt the rescuer the shff's return of rescue
is conclusive of the fact of rescue. and it is also Brod 716
conclusive in an action agt the shff for an escape Vautr 124
In this state shff's return may be disputed! 2 Vautr 175
Com. 45

But the shff may in such case if his return is false
be sued in case for a false return and here the return is
not conclusive -

Difference between the consequences of voluntary & non-escapees

In case of voluntary escape it was formerly held that the party escaping was entirely discharged from the debt or claim or whatever it might have been & the whole debt was thrown upon the off^t

Ab^t 202. 2 Bac^t 280.

This is now overruled. At this time the plf where the proc^t is final and the escape voluntary ~~or the original ex^t or the original judgment~~ may have a new action of debt agt the party escaping or a new facie facias agt the party escaping

Ab^t 600. 1 Ridg 330. 2 mod 136.

1 Inst 4. 269.

Indeed it is also said that the plf may retake the party escaping on the original ex^t notwithstanding the endorsement.

Bal^t V. 209. Esp^t Dig 611

By the Stats 8 & 9 16th 3. the plf on the ex^t may obtain a new ex^t on motion without a scire facias.

3 Bl 415. 2 Bac 241. "escape"

And where a voluntary escape is suffered on meane proc^t the plf may retake on an escapee-warrant 3 Bo 526. 2 Wilson 295. Esp^t Dig 611

But the off^t permitting a voluntary escape 15id 330. can never retake the party escaping or maintain any action agt him 3 Bo 52. 2 T^t R 176 3 Bl 415
For the off^t is perhaps criminal

And if the Off in such case should retake he
is guilty of false imprisonment

1 New 269 27 & 176. Bac abr escape's

And a bond given to save the Off. harmless
ag^t the consequences of a voluntary escape is void
as being ag^t law. 1 Pow on Bon 196. 7 10. 6o 100 b
2 Bulst 213. But a bond given to indemnify the Sh^f ag^t
a negligent escape is legal & valid. 1 Root 151. (1st)

But the Sh^f in the pro cap may retake
the party escaping even tho' he has before recovered
judg^t ag^t the Sh^f &c. provided it is said that
the party does not recover ag^t the Sh^f the whole
of his claim ag^t the escapee. but this qualification
I think wrong. (see ante. Bull. et. § 69. Esp. Reg 611
it ought to be "provided the action ag^t the Sh^f was debt"

The Sh^f may always retake the escapee &
recover his debt ag^t him in all cases except when
the action is recover^t ag^t the Sh^f in an action of
debt according to the St. Westminster 27 & Rich²

In case of a negligent escape the
Off from whom the escape is made may recover
ag^t the party escaping & may retake him for
he is not in fault Bro. Eliz 234. 3 6o 52(6).
Esp. Reg 612(3). and indeed the Off is bound to
retake him if he can.

And if the Sh^f has taken a bond that
the party ^{must} shall remain a true prisoner
he may recover on that bond in case of
negligent escape 1 Root 151.

X. But a shiff's baillif cannot recover ag^t the party escaping, even tho' the shiff has recovered ag^t him; the baillif for a baillif is a mere private undertaker, not liable to the shiff in the process nor even to the shiff himself unless by express contract.

³⁴⁹ Bro. Law 247. Sip. Lij 613

1 Bl 245.

A Baillif is a person whom the shiff authorizes to make an arrest within the limits of his hundred.

If the baillif has by his contract bound himself to indemnify the shiff ag^t a negligent escape, he is in the case of any private person who has voluntarily bound himself to indemnify another ag^t a wrong from a third person.

It has been decided in this state that a party escaping may be taken on an escape-warrant in a neighboring state. The process in this case must of course be mesne, or an escape warrant issued under an order from some judge.

The principle of this rule that the shiff has a personal claim on the party escaping

1 Rool 167

If a person arrested on criminal process escape, he is at com: law guilty of a misdemeanor & if he escape by breaking the prison wall, he is guilty of felony.

4 Bl 129. 130. 2 Haw 122. 8-

This is indeed the rule of the com: law but it seems to me of no use. It never appears to have been put in execution here.

In the off who has arrested a felon & suffered
a negligent escape is liable to a fine etc.

For a voluntary escape of a felon
he is liable to the punishment of the felon
as an accessory after the fact.

1 Hale Pl. of Br. 390. 2 Hale 134

4 Bl 130.

But the off is not punishable as
an accessory after the fact can never be punished
as such until the principal is convicted &
sentenced. But before ~~punishment~~^{sentence} of the
principal the off may for a voluntary escape
be punished for a misdemeanour in having
permitted the voluntary escape of one arrested on civil
process. 4 Bl 130 4 Cb.

Where for a negt. escape the off has been made to pay the debt due from the party escaping
the off may maintain 'cidebitatus a sumpt' out of the party escaping & the same rule has been held where the factor or depy. were guilty of a felon escape. But it is now held that if the depy. suffers a voluntary escape & the off is compelled to pay he can (Peake's Ba: 146.) maintain no action agt the party escaping. Peake's Rep: 146. J.R.

If after negligent escape the off
takes the party 'on fresh suit' before action
brought agt the off no action can then be brought
agt the off. (But a recaution subject to action but will
not be a bar) The expression 'on fresh suit' means
nothing. Stra 908. 3 Co 44. 52 27126

1 Ven 211:17. Esp? Dig 616. 1. 201 106.

But if an action is brought agt the shff before recaption the shff cannot by recaption afterwards defeat the action. Bro 2057. Itra 53
Bro 2057. 3 Co 44. 52. Esp^t Dij 611.

To a voluntary return of the escapee into custody on a negligent escape before action brought agt the shff discharges the shff 2202 126
Itra 2 554. 1 13 & P 413.

But in the case of voluntary escape recaption before suit brought is no discharge of the shff for such recaption is void.

& also because a personal pledge once voluntarily relinquished is gone forever so therefore a personal lien.— 3 Co 59. 6 Esp^t Dij 611:12

In case of voluntary escape to a voluntary return of the prisoner into custody before action brought will not discharge the shff. 2 Wilson 294
Itra 276. Esp^t Dij 612.

^{Rebagg.} After action brot the shff in case of negligent escape may still retake the escapee.

If after a neg^t escape the shff in the process discharges the shff the jactor cannot retake him for ^{replevin} tho' if there had been no escape the jactor might have retained the shff until his fee was paid
Itra 905 Esp^t Dij 611. 607.

The reason is that the jactor is guilty of neglect and by the escape the shff's lien is lost.

On a negligent escape by a person having
the liberties of the prison - and all the rules relating
to negligent escape apply. 1 Root 106:7.

Yet in such a case the Sh^t may recover
nominal damages agt the surety on the bond if
indeed only tho' the party escaping is taken or
returns before any action brought agt the Sh^t
before. For here is a bond given & the condition
is broken. But this recovery is only of nominal
damages.

(The Sh^t may recover on his bond after his liability has determined by the Statute of Limitations (Root 151) But the Sh^t in such case where there
is a bond is not compellable to receive the
prisoner returning 1 Root 128.

He may do it however if he chooses.

Under a count for voluntary escape the
Pl^t may give in evidence of a negligent escape
& this will support the designation & the D^t
may plead any thing wh^t would be a good
defence agt a neg^t escape even without traversing
that the escape was voluntary Ventr 211. 2 S^c 126.

How then is the Pl^t to avail himself
of the distinction between a voluntary & neg^t escape?
The Pl^t must make a novel assignment of a
voluntary escape (sa St 1 Ventr 217. 2 S^c 248).

If the party suffering from a voluntary
escape brings his suit agt the Sh^t the Sh^t appears to
be discharged. See Dig 512.

If after an action brought agt the sheriff before hearings the judge in favour of the plf agt the party applying^{is} the shiff may defeat the action agt himself by pleading "not in record" for the shiff cannot recover without a record.

But if after the judge & coⁿs are undered agt the shiff the judge upon all the escape was made^{is} reversed the judge agt the shiff is still good & cannot be reversed. 2d 142 b. 4th 109 3 mod 355. 325.

The shiff would in this case however have relief by audit^e quoniam it 2d 142 b Bac Abt. au. quer.

2d 141. of voluntary escape occasions the forfeiture killed 146 of the office of the person suffering it. and subjects him 2 Bac 240 to punishment for a misdemeanor. 2d 271. 3 mod 128.

By the common law it is the duty of the shiff to furnish a jail fit^{for} confinement and thebaul or if prisoner escape thru insufficiency of the jail 2d 142 1 Root 500. Stra 442. Cope 60 i. rules

In this state it is the duty of the County to erect the jail & therefore when a prisoner escapes thru the insufficiency of the jail the County & not the shiff is liable. 1 Root 450 & count.

This is nominal damage is given by the County to the person suffering from an escape thru the insufficiency of the jail. 1 Root 318. 1 Root 155 158. 275. 357. 4150. 555. 2 Root 30. - (vide 2 Root 196).

This mode of meeting the claim is merely an evasion of the rule. The remedy agt the County is by petition or memorial appeal lies from & to Sup^t Ct. If a shiff makes a false return he is liable to an action on the case to the party injured by the false return as if the shiff return^e in service when there is no return service the shiff may sue him so 1 Nelson 336 Cope 615. Stra 602 2d 729.

Here if a Sh^t makes a false return the Dft may falsify that return in a plen of a batement

In most states & by the common law this rule is left but a special action must be brought w^t the Sh^t for that purpose. "Pleadings" - So also if Sh^t Itra 650 makes return of non est inventus the Pl^t may sue the Sh^t bro E 729 for a false return! If a Cred^t voluntarily discharges a person arrested on f^tial justg whether committed or not he cannot afterwards recover ag^t the party thus discharged. 41 Barn 2482 Itra 653. 52 C 178. 7 T^d 420. 6 T^d 525. 17 C 557. Esp^t Dig 616

If the Pl^t in ex^t discharges the Dft in custody or under arrest on a new promise or bond by the Dft 4 Barn 2482 to pay the debt & the promise is broken the rule is 7 C^t L 420 the same but he may sue him on the new promise or 8 C^t L 23. ions. That however is the Cred^t's only remedy 15 C^t L 557

2 East 243 (A) 6 C^t L 525.

And if the new security should be defeated Itra 653. for any want of legal requisites the rule is still C^t L 512 the same & the Cred^t loses his debt entirely.

17 C^t L 557. 6 T^d 525.

And if a Sh^t in an ex^t discharges the Dft on a bond that the Dft will surrender himself in ex^t on a future day this bond is void. It has been before said that If the Sh^t so says that bond is void. For the bond in both cases is that the Dft shall be falsely imprisoned.

2 East 243 1 B & C 243

On 6^t forman decided that such a bond was good but it is somewhat doubtful what the rule would now be in this state -

2 Root 133

If two joint debtors are taken on an exⁿ the discharge of one of them, ^{by the creditor} is a discharge of both from the whole debt. & if he is detained he may maintain false imprest or have habeas corpus

1 Fost 93. Salk 574. 2d Rayd 690. bro 6551

It was formerly decided that if a sole deft died in prison the debt was forever ^{extinguished} discharged.

4 Hob 52. bro 2850. bro Iac 136. 143.

It is now however declared to by
21 Iac 1. that in this case the deft may sue out
a new ^{act} ~~if~~ ^{the goods left} there had been no ~~treat~~ person
(2 Dac 354. Kib 183.) prior execution

This st is declaratory not remedial.

If one of two joint debtors die in prison it was always held that the other debtor was not discharged 5 6o 86. bro 2850. bro Iac 136. 140

There is a class of bonds taken by diff^r from prisoners commonly called bonds of caue & parole wh^{ch} are declared void by St. 26 Henry 6. or 23 Henry 6. This bond is given on admitting the prisoner to the liberty and is always a penal bond — of bond that the deft shall remain true prisoner till the debt bond & fees are paid is by this st declared absolutely void & void in toto.

1 New 237. 1 Pow^d on Bon 173. 12 Mod 683
2 Wilson 351. 10 6o 100 b.

This st has been adopted in this state & extends only to penal bonds. But the diff^r may take a penal bond that the deft shall remain true prisoner till the cost is paid. but not until bond be paid. On Sept 6th have determined that Cost 158. the bond is void only upon the bond & fees.

At common law all prisoners committed are to maintain themselves except felons attainted - 1 mod 152 12 16653

Sec 68. for a felon attainted for felony all his property.

By our St law a person committed to prison for any offence is to pay all expenses ^{of conveying him to jail, maintenance &c} ~~explicable~~ but they are regularly paid in the first instance out of the town county or state treasury. But the state &c has its remedy at the prisoner's hands. It is soon lost by detaining the prisoner until he pays these expenses but the Ath for the State with the advice may discharge from prison or taking prisoner note &c Gaols 58.

"There is no law or common law for any civil claim to be destitute of property & forthwith proceed to cause he must bear his own expenses unless he will take the poor prisoner's oath that he has not on earth seventeen dollars or not enough to pay the debt & that he may not disposes of a part of his prop to defraud his creditors. If he takes this oath Gaols 515. he is to be discharged unless the Br will maintain him. But he is not of course entitled to this oath the Br must be summoned to show cause why the oath should not be administered - if the magistrate requires the prisoner not entitled to the oath he need not administer it 1 Root 58. St Br. 3d Jails.

If the mag' first applied to refuse to administer the oath the diff ^{make another application} in nature of an appeal to a judge of the Br and a judge of circumstances may make his application Justice & the Br may appear in the same manner. (See mag. Gaols 517. 18. does administer.) If the Br does maintain the debtor in prison ^{the diff} he cannot afterwards obtain his discharge Gaols 519 ^{merely} paying the judg'd debt but must pay for the maintenance also. (and a new ex^t may be granted for the prisoner for the maintenance if he is discharged by the creditor.) Where the County is destitute of a jail a prisoner or any person liable to imprisonment may be committed to the jail of an adjoining County.

The St of Court is very similar to the law adopted by congress as to debts due in the federal Courts.

(56)

On the trial whether the debt is entitled to take the oath
the debt is made by Stat a competent witness, and the
Creditor has a right to discolour under oath from the
debtor, and in the latter case if the debtor refuses to
be examined the new prisoner's oath must be
refused - & then rules prevail both in regard to
the trial before the Justice but on review.

Stat. tit. Just. addition in 1828 -

Formerly after the administration of the oath
the Creditor by leaving money for the support of
the prisoner could keep him in prison as long as
he pleased but by Stat of 1831 the law on this
subject is materially change'd.

Duty of Sheriff in serving process

If the process is by summons merely service is to be made by reading in Deft's hearing or by leaving with him at his usual place of abode an attested copy of the writ &c

The copy must be substantially correct & not materially variant from the original. If it be materially variant the service is bad & the writ will abate if the deft pleads in abatement

2. If the process be by attachment it is the duty of the Sheriff to take the personal property of the deft if suff. can be found. If suff. cannot be found then the body or real estate may be taken.

The object of the attachment is to secure property or the person of the deft to answer the demand and tho' the writ is defective, serves so as not to hold the property he still is liable if served in such a manner as would be a good service of it as a summons the deft will be held to trial & cannot plead the defect in abatement.

The body & property cannot be both taken on the same attachment, but after taking the body, if the Sheriff finds, prob. it is his duty to release the body & take the property so I suppose if the Sheriff commences the attachment of property & finds that he cannot lay hold of suff. property he may release the property & take the body.

Where property is attached by the Sheriff he must
leave an attorney copy of the writ & of his return
describing the estate attached with the Deft or
at his usual place of abode.

And where real estate is attached a like
copy at the Town Clerk's office of the town in which
the lands lie,

If the Deft is not an inhabitant of the
state the copy is to be left with his agent or attorney
if he has any & if he has not then with him
who has charge or possession of the estate attached.

It is the duty of the Sheriff on attaching personal
property to remove it within a reasonable time
from the possession of the Deft & to take it into
his own custody. If not removed within a
^{due} reasonable time, other creditors may attach it &
the Debtor may materialize sale of it to a bona
fide purchaser & perhaps even the attachment until
removal won't be nothing between the Sheriff & Deft.

The Sheriff usually delivers the property attached to
some friend of the Deft who takes it as bailee of
the Sheriff to keep it & gives to the Sheriff a receipt
for the property. The bailee is hence usually called
Receipt man. The Sheriff is not bound thus to
commit the property to a receipt man he may
keep it himself to be forthcoming to answer the
execution which the Plt may obtain.

The engagem' of the receipt man is usually to
deliver the property attached to the Sheriff on demand
Demand is however seldom made until the ex' is
issued then it is made & if the property is delivered
it is taken on the ex' & sold at the post office
proceeds applied in paym' of the debt.

If the Off. fail, or recovering judg^t the property attached immediately reverts in the original owner & it is the duty of the Officer & of the receiptman to deliver it back to him.

But if the Off. recovers the property, continues sequestered for the space of 60 days after judg^t, & if the property cont^r in the hands of the Off. who attached it & the ex: within the 60 days is given to him he levies on the property & sells, & if the ex: is handed to a diff^t Officer the latter Off. demands it of the former Officer & if it is d^r in conformity with the dem^r it is levied on & sold, if the officer who has the prop^r refuses to deliver it he is liable to a proper action. If within 60 days no ex: is given to the off. who attached & no dem^r made of him the property is delivered of the lein & is to be d^r back to the debtor so if the property is received & no demand is made on the receiptman within 60 days after judg^t the property is delivered of the lein. If demand is made of the Receiptman & he refuses to deliver the shff is liable for the non production of the property to the creditor & the receiptman liable to the shff

If the property attached is lost or destroyed in the hands of the Off. or Receiptman without any fault they are not liable, they are bound to ordinary care but are not insurers of the property.

The claim on real property is lost unless the Sheriff serves his Ex^r within 4 months after obtaining judgment.

Certain property, as necessary household furniture, one cow &c, is exempt from attachment & from Ex^r. If the Sheriff attaches & takes any property, except he is liable to an action in favor of the person whose exempt property is taken. The action may, it seems be trespass.

The interest of the debtor in an incorporated company may be attached.

But choses in action are not liable to attachment, except that where debtor absconds, & where his body is not liable to arrest them by process of forced attachment than who one a debtor may be compelled to pay over what the debtor owe to the creditor, of the debtor.

After serving a writ the Sheriff must endorse his proceeding on the writ & return the writ with his indorsement to the Court to which the writ is returnable.

His indorsement is prima facie evidence of the facts stated in it on the ordinary principle of evidence it being a certificate of his proceedings as a public officer, made by the requirement of law.

In Engl^t the endorsement is in general conclusive
evidence of the facts stated, *per Com^t*. It may
be contradicted

and both here & in Engl^t if the return be false
an action will lie by the party injured whether
creditor or debtor for the false return -

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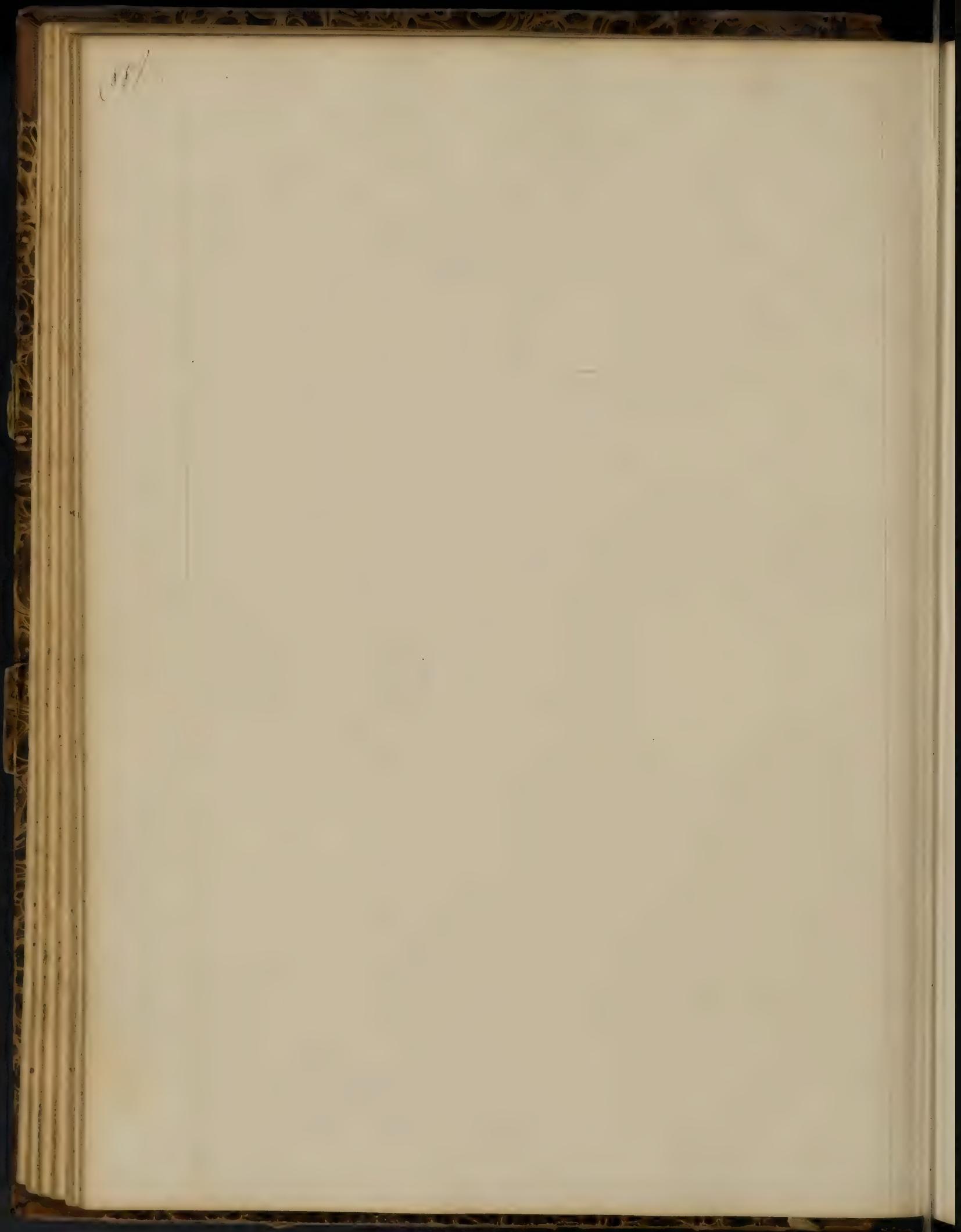
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Demand

A bailment is a delivery of goods on a contract
express or implied that they shall be returned
to the bailor or disposed of according to his
direction when the purpose for which they
are delivered shall have been answered,
or destroyed by such keeping, &c.,
Force 3. 48. 12 1/2 451. 12 Chit 412, 42 202.

The bailment with a qualified property
in the bailed b. v. 172, force 112, Doct & it
124, 1 Bar 245:1.

It is to be observed that a bailee is
distinguished from all other b. and because
he has a property or interest in the goods
bailed out as they expect them it may
distrust him between bailee & owner, the
bailee may bailee has a calculated
possession of the goods & possesses - a
admitted that the law will protect - not
all the world except the bailee the
bailee is the owner. 4 Co. 8. 3. 4. 6. 20 202.
Force 112, 12 1/2 172, Doct & it 124. 7 1/2 R 34, 2,
347:4. It is 555. The bailee claims from
the master, if the contract has a higher
interest than any other bailed.

Bailments, Genl Rule concerning the bailee's liability
 Because the bailee is not liable for any loss or
 damage until the goods have descended without
 any fault on his part. This is a gen'l rule
 but not universal.

But to determine when the bailee is in
fault the nature of the bailment & the
quality of the peculiar bailees as well
 as the conduct of the bailee are to be
 considered & the principal object of
 course is to ascertain the ordinary care
 & diligence with which in each case the bailee ought
 to exercise.

The bailee under a silent acceptance of the
 goods with a desire of gain
 proportioned to the nature of the bailment
 in some cases the diligence required of
 a bailee is greater than ordinary care,
 in others less than ordinary care — the
 acceptation is gen'l where the bailee enters
 into no special agreement as to the care
 with he will use unless he does agree
 concerning the care the special agreement
 determines the care which is to be used
 & the law is silent on the subject.

(Definitions.)

Ordinary diligence is that which a man will manifest in the care of his own goods or in the management of his own concerns.

But the degree of diligence is either due to the property, it depends how no less than upon the civil law the action has largely appropriate to each degree of care.

In every degree of care there is a corresponding degree of neglect and the omission of ordinary care is ordinary neglect. The omission of that care which a diligent & vigilant person would take in ordinary neglect & the omission of that care which ordinary persons take is more than ordinary neglect. *1 Inst. B. 30. 1.*

This last kind of neglect is usually called gross neglect & they being considered as evidence of fraud in the buyer, at least if it is prima facie evidence of fraud. *30 Raym. 915.*

1 Inst. B. 30. 1. 64. But if the buyer uses his own goods of a similar kind in the same way this rebutts the presumption of fraud.

Genl Rule concerning the degree of care required,
Bailment, to apply the genl rule that the law
requires the keeper proportional to the
value of the bailement.

If the bailement is for the benefit of the
 bailee and under a genl acceptance
 nothing more than good faith is required
 of the bailee, if it is not liable even for
 gross neglect save the circumstances
 justify the presumption of fraud,
 $\text{Ex parte} \text{ commodum sentire debet}$
 $\text{mag}^r \text{ 1 } \text{ Trin}^r \text{ C 247. } \text{ Ex Ragn 915. } \text{ Jones 15.}$
 $10. \text{ 21: 2. } 32. \text{ 51. } 55. \text{ 64: 5. } 101: 2. \text{ } \text{ In 42053.}$
 Coke says that the bailee in this case
 must keep the goods at his peril but this
 is clearly not law.

When the bailee is the only person benefited
 by the bailement he is liable for slight
 neglect. Jones 15: 0. 23. 33. 89. 90: 1.

Where the bailement is reciprocally
 beneficial to each both parties
 partake of the risk & the bailee is
 bound to use ordinary care merely
 he is liable only for ordinary neglect,
 a far less neglect. Jones 14: 22, 32: 3.
 101. 105.

Division of Bailments.

Bailments are of 2 kinds. the law has made these kinds & it is not the most logical division however, Neither is Sir Wms's division perfectly logical. It deposition a delivery of goods to be kept by the bailee with reward for the sole benefit of the bair, 20 Ray 412:13. Ball 72. Jones 521.

III Commodatum, Lending this is a gratuity loan of goods with a right of being used for use & for the sole benefit of the bailee, bair or now called lender, the cailee borrower, 2d Ray 413:5. Jones 50. 34.

This is distinct from a mutuum, a mutuum is indeed a loan & in fact a gratuity loan but it is a loan not for use but for consumption to be repaid in articles of the same kind but not to be specifically restored. In case of misfortune the article of property is restored in the bair or by the cailee a mutuum therefore is plainly no bailment.

III Locatio & conductio letting & hiring 20 Ray 417 this is a delivery of goods to the bair to be used for a certain reward to be paid by the bair,

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Bailments. Definitions.

IV. Delivery of goods as a security for
to pay all some debt or duty due from the bailed
for 50. to the bailee.

104

Bull 72

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V. Delivery of goods to be carried or
about until some act is to be done by the
bailee for a reward to be paid by the
bailee. They include delivery of goods to
a common or special carrier, to a
mechanic, to commercial agents etc

VII. Delivery of goods as in the last case
with reward by the bailee to the bailee
Page C 254. 5. folio 73. See Ray q15. 5.

The bailee in this case is called a mandator
& the bailment is called a mandate in
Latin mandatuum.

— Liability of depository

II. Depositor, or delivery of goods to be kept by the bailee with reward, —
For the delivery is advantageous only to the bailor & the bailee is liable only for gross neglect at most. Fact & St 129. Full & Dyer 1st, 64. 5. 102, 141 & 153. 2d 109. Log. 13. Sta 581. 1094.

The depository is liable for gross neglect only 1 Bl C 462
as this is evidence of fraud, Jones 13.30.

In some books it is laid down that
the bailee can be excused by ordinary care Sta 581
1 Parl. 247. 2d Raym 913. But in ordinary
care there is nothing unusual in it, & so it is meant that
it is not liable for less than ordinary care unless
there is gross neglect.

and the depository is not always liable
for the grossest neglect & indeed he is not
liable for gross neglect in the abstract at
all he is liable only for having the gross
neglect may be evidence of fraud.

If then the depositor treats his own
goods of the same kind with the same
neglect as he has treated, the goods of the
bailor he is not liable for the most gross
neglect, or here the presumption of fraud
is rebutted 2 Raym 914. 5. Sta 1094
1 Parl. 245. 4 Ban. 230.

if the bailment is all advantageous
to the bailee the bailee is not bound to
use any care —

Bailment, Depository, Southcote's case, Delivery a consⁿ
& Rauw By a special acceptance the depository
 911:13. 655 may bind himself to do extra - the friends
 I Reer Hee & subject notes presuppose that there is no
 245:6. 8. 4 special agreement.

400:36 The older opinion is that the depository
 405:15 is in all cases bound to keep the goods in
 safety at his peril

In Southcote's case the de^r stated that
 the de^r rec^d the pl^s's goods & promised
 to keep them safely the de^r held
 that the goods were stolen the de^r consid-
 ered the case as if it stood on the fact of
 the de^r & on the law of the de^r the de^r
 had made the special acceptance which
 bound him to keep the goods safe at
 all events. But Adcock's doctrine is wrong
 tho' the case was rightly decided.

de Rauw 655. quin. 913:14. ita 10. 99.

Conn. R 133. 135. Bull 72. ita 10. 99. Besides
 the pl^a did not den^d his own negligence
 consistently with the pl^a the goods might
 have been stolen by his accomplice

Formerly held that if one undertook to
 100:241 keep the goods of another for reward, the
 de^r & de^r acceptor was bound but that if the
 105:29 bailment was a safe consideration
 105:909 the bailed may not bound to keep the
 110:91 goods at all. But now it is settled that
 115:40 the de^r acceptor is a suff^t consideration to
 120:40 make out a special acceptance of goods
 125:4. & to make him liable under a general
 acceptance

Depository,

Again it has been held that if goods are left with a depositary in a chest of all the bailee has the key the depositary is liable for the box alone & not for the ~~the~~ ^{contents} goods. but at the time of De Coke's Baileys 1 Baileys 237 was not at all understood, this doctrine is now denied De Raym 914.

The circumstances of the bailee's knowing the contents of the box must however make much difference with the liability of the bailee. It seems as Jones 514 if it was the duty of the bailee to inform the vendor of the value of the goods in the box, a degree of care which would not amount to gross neglect if the goods were of trifling value might amount to gross neglect if the goods were valuable. The bailee's neglect must be measured by the bailee's suspicion & belief concerning the contents.

If the bailee expressly undertakes to keep the goods safely the gentl undertaking is not an insurance of the goods agt the acts of God or of violence with the bailee De Raym cannot resist indeed this undertaking 915 means no more than that the bailee Oct 1130 will take all care & use all diligence, 1 Rule 248.

The construction is analogous to the Abel 34. covenant for quiet enjoyment. He may indeed make himself an insurer of all accidents but the gentl language used above does not make him such insurer.

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Mailments & Provisions.

It seems however that in the case of
4 Cos 3 the gen'l undertaking above the date
forwards would be liable in case of non-delivery
theft for a lender can not entertain
excuse his gen'l not considering theft
in the undertaking to have been sufficient to lend to at least a lender, case.

12 R' 3. Suppose the goods are delivered by
3 Sept 1 the lender of the depositary & the
dep'ty provisions liable & if so in what form
14 Sept. of action,

10. 14 Oct.

2. R' 104.

11 East 52

1 Feb 48

5 Sept 18.

Borrower liable for sight neglect.

It commodatum, a gratuitous loan
of goods and advice of use to be used
by the bailee & restored to the owner.

Here the bailment is for the benefit of
the bailee only & when the bailee is causa-
ty more than ordinary care & is liable
for sight or the last neglect will occasion
a loss. Bull. 2d. Jones 91. ad Raym. 4. 1.
1 Dall. 249. 250.

of lending a horse to B & B puts the horse ad Ray 916
into a stable whch is unlocked & the horse 1 Dall. 250
horse is stolen B is liable. but this must
depend on the place & the probability of
his being stolen. He is indeed bound to
more than ordinary care not in connt
it w^t not be more than extraordinary care
to keep a horse in a locked stable.

of boroune however it is agreed is not ad Raym.
liable for a loss occasioned by force 1 Dall. 251
whch he could not resist unless he
unnecessary exposed the property to the
danger,

Bailments. Commodatum.

or will he is liable for theft clandestinely unless he can prove that he was more than ordinary care to prevent that. Jones 61 (n) 42.

But a borower may subject himself to a loss occasioned by inevitable accident if he commits the same into a situation in which he is exposed to the hazard of such an accident. The proper mode of expressing the rule is that he is not prima facie liable for loss by irresistible force.

He is not in your case a loss occasioned by inevitable accident, but of previous breach of trust he may make himself liable for any such accident if of borrowing a horse for one journey & takes another he is liable for all losses also.

Ray m 915. 1 Park 249: 50. Jones 95: 6, this rule of Ray 917 applies to all bailments whether in and from crop 244 the moment of the breach of trust the owner Park 253 may be said to have a right to sue for action, 1 Mac 237: 8. He is no longer a bailee & cannot take the benefit of that character.

Jones 95 again borrows a very valuable man, subject himself to inevitable accident if previous rashness. —

III Locatio et conductio, letting & hiring, in this case as in all others the bailee acquires a qualified property & the bailor is entitled to a stipend, the bailment is mutually beneficial & according to the Lo Ray 916
and rule the bailee must use ordinary PoE 257
care & diligence, the expression in Ragn Bull N^o 72
& PoE was used unadvisedly
Jones 14: 120-3. 1 SwD 389: 90.

bailment of personal property security for some debt or engagement-

IV Vadeum, pledge 1413L 114. Lo Ray 913. If the seller has
exp 924. This Contract being beneficial right to purchase
to the pauper by securing his debt &c to the back the article
pauper by prolonging his credit, the bailee will the trans-
therefore on principle must use ordinary care 176 RL 114.
Lo Ray 917. Talk 523. 1 Pow C 252, In South-
etc; case it is said that he is bound to
keep the goods only as his own, because Co Litt 89(a)
says Ed Coke he has a property in them, Br & Co 84
Every bailee has a special property & the
pauper has no more, Jones 105. 145.

The liability of a pauper then is precisely
like that of a hirer, He is then given a
facie excuse for a robbery. Lo Ray 917
Talk 522. Jones 61. 107. 109. 111.

Froobill's Liability of Pawner, effect of having

the son the other case it is said that the

Exch 14. pawner is not liable for a loss occasioned
Nov 1781. in case of theft but when a depositary

Aug 237 may be liable for a loss by theft

Op 80245.

In Wm Jones again had an application
 that if the goods are stolen the pawner
 is always liable from 1661 & for he
 says ordinary diligence can always guard
 against theft. 0

I think in case of theft the pawner is
 liable if in point of fact he did not
 use ordinary care & the question whether
 he used ordinary care is like every other
 fact to be proved & tried by the jury.
 See Ray 4/18. Went 111. Dick 522 &c

The pawner requires a special interest but
 his interest is determined by payment or
 tender of payment on the day appointed
 & at that instant the property is completely vested
 in the pawner, see § 244. Jones 111.
 Balliol P72, 4 Co 83(6) Nov 1791.

Hence if after payment & tender on the day
 & demand the pawner retains he is from
 that moment a mere loan & will be
 liable for any loss whatever. 4 Co 83(6)
 Dick 525 Expt 1625. See Ray in 4/17. 1 Part 253.
 1 Inst 340.

The pawnee is also immediately on such tender to liable in detinue, trove, or assumpsit at the election of the pawnee 1 Rols 66 in assumpsit because the refusal is a breach of the implied contract. Jones III 1 Bae 237/8 Bull 72.

By a breach of trust all bailees become liable not only to all losers but to an action adapted to the nature of the case.

And a refusal to deliver the pledge by the pawnee's authorized servant or agent is the same as a refusal by the master, by merchant's clerk, Crof, Saik 441. Jones 126. Bull 72.

And if one pawnee neglects to secure an insurance debt he cannot recover the pledge until he has tendered the principal & lawful interest. The principle is that the actions of trove and assumpsit are equitable actions and an equitable defense is good but if detinue was brought the pawnee can be recovered without such tender.

Tortious, When pledge may be used?

Refusal to deliver a pledge on payment
alk 522 or tender of the debt is a crime, thus
B. 30309. is an exception to the general rule that
concerns a breach of trust is no crime,
4th 25x.

cauth 277 the rule seems to be founded on
2. Hank 240 policy to protect the pauper from
1. Bae 24. oppression & the transaction is generally
a secret one,

In some cases the pauper may use the
pledge in other not in the absence of
any agreement on the subject. When
there is no express agreement the right to
use it is founded on the presumed intent
of the pauper. The presumption of the
pauper's consent is said to exist if not
one 112:3 as the pledge is likely to be made better
or worse or not at all affected by the
use. When the pledge w^d be better for
use the law presumes a consent that
the pauper may use it, so if the pledge
will not be injured by use it is said
that the pauper may use them ex.
trinkets &c. In this case however the
pauper uses them at his desire & if they
alk 522 are lost while in use the pauper will
B. 11. be liable even in case of robbery but
Jones 113 not in case of inexcusable accident

125 Parag. 7

Co Litt 57

1. Law D 390.

Pecuniary, &c. Use of property pawned,

Vadium.

Again if the pawnee is at expense in keeping
the pledge the pawnee may use it by this
way of reimbursement. Ex if a horse or
a flock of sheep are pawned & in this case
I think that the use will not extend his
liability at all for here the right to use
is matter of justice not of indigence —

But the pawnee does not seem to be obliged
to account for any benefit derived from
the use of the pawn. Jones 115. the civil
law is otherwise —

But if the property would be a use for use
and will not be of expense to the pawnee
the law gives no licence to the pawnee
to use the property. Ex clothes pawned.
Ed Raym 917. Jones 113. Ball 72, and in this
and in similar cases the use of the property
is a breach of trust and trouz will lie
if he is liable for all accidents — Bac 25
(trouz) He is liable in trouz even tho' the
debt is not satisfied & tho' the day of payment
has not arrived.

Pawn - Goods found,

The law as to pawn L & H. it says applies to goods found, by this is meant that the ^{owner} ~~owner~~ ^{finds} is bound to use the same diligence as ^{the} ~~owner~~ pawnee is bound to use but it is said that a finder is not bound to keep the goods safely and that he is not liable for negligent keeping, ⁱⁿ ~~in~~ Eng. Esp. & 599 1 Recd. 123 1 B&C 243 But this is not law.

Mr. Pow. says The finder is then bound to use the law implies ordinary care, in the case of a contract to deposit the owner selects his man as ordinary in the case of a finder, not so. care, but if the goods are taken without consent of the owner the finder is voluntarily & if he is in steal he ought to be bound only in tort. to ordinary care, 2 B&C 2857.

In Conn. our Stat. law has made an express provision for a compensation to the finder in Conn. therefore the instrument is therefore commercial to both & here of course ordinary care must be used.

{ 2 B&C 21 The doctrine in Eng. is a mere
London doctrine & is wholly indefensible, the
Eng. decision arose out of the doubt right for
1 B&C 243 which was lost & there will not be for
more negligence 2 B&C 251. & Co. 146. 5 B&C 269.

Pawns, Goods found.

If finder of goods at sea has no claim on them for his expenses & trouble his expense & trouble is a voluntary contract 2 H.B.C. 254. 2 B.R. 117. Stra 451

If then the owner claims property & demands the goods & the finder refuses to deliver them lies. -

and this seems to be no way 26.6106
in which the finder can recover compensation. 2 H.D. 17.95
as to property found at wreck the law is settled 2 H.B.C. 254
the person who saves a wreck or an abandoned 20 Raym 293
ship to sea is entitled to a compensation, by 57.22.270.
the law maritime & may retain the property
until compensation is made. -

If refusal by the finder to deliver
goods to the owner is ~~not~~ ^{by conversion unless} he is furnished with ~~sufficient~~ ^{reasonable} evidence of property
2 P.B.C. 312. 2 H.D. 590. In each case the
jury must judge whether the evidence was
reasonable.

In County of found the goods of B. presented
himself & claimed them as his & refused to
deliver them & sued ~~at~~ in term & recovered
B then the real owner claimed the goods & but
then it was held by the court that B was
entitled to recover, 3 S.R. 125. 1 H.B.C. 619.
Dong 161. 2 H.B.C. 408. Story's Rulm. 5105.

Pawn Right of Redemption,
 of the pawnor after having tendered the debt
 on the day, recovers the pawn in favor the
 pawnor is demanding the money before tendered
 can have his action for the debt
 1 Rulz 2 q. 31. 1 Bac 233. The debt is not
extinguished by the pawnor's refusal to claim
 the pawn.

Str 914
2 Litt 116
Esp 10.
Yelv 179

126 Bl 114
1 Bac 238

If perishable goods, being pledged away the
 pawnor is still entitled to his debt. Yelv 179.
 1 Blk 523. Co Litt 209. 1 Bac 238. - And while
 the pledge remains unclaimed in the hands
 of the pawnor he may sue for his debt &
 recover unless there was a special agreement
 to the contrary, even if the pawn decays
 by the neglect of the pawnee. He can still
 sue for the debt tho' he w^t be liable for
 the neglect. - Rule the same in case of
 ransom bills, 3 Burn 1734. Dory 619. 1 Blk 563.

If the debt secured by a pawn is not paid
 at the day appointed for payment the whole
 property in the pawn is vested at law in the
 pawnor Co Litt 205. 3 Blk 395. 2 Vern 191. 8.
 in Equity however the pawnor may redeem after
 non-payment on the day. as in case of mortgage
 - the rule once a pawn always a pawn holds 2 Vern.
 But this right of redemption in equity exists
 I trust not where the pawn remains in the
 hands of the pawnor or where the pawnor's
lien only is assigned for the pawnor has
 a right to sell on non-pymt on the day.
 Christian Observer 22 vol p 176.

Powers: ~~cannot be abrogated~~

After the day of payment has arrived with
payment or tender the pawnee acquires the
right of selling absolute, but ^{not until} after
12 mos & one day & then the excess of money
recd ^{or} ~~after the~~ over the debt interest & expenses
must be refunded to the pawnor.

22 Vol Ch 165 h 176. Co Litt 205.

* i.e. where no day of payment is fixed, it seems, that
after 12 mos & a day have elapsed the pawnee may
sell at law ⁱⁿ ~~with~~ ^{for} ~~the~~ ^{same} difference not

It is said that the pawnee before the day
of paym^t ^{may} assign his claim & transfer with
his claim to his creditor the right of holding
the pledge 1 Brist 21q. 31. 1 Bac 23q. Owen 124.
arg^t 1 Ves 250. But I do take this doctrine
not to be fair. Even bailment is a
fiduciary contract & every man on his own
property is personal & cannot be assigned
more than the master's right in his appren-
tice can be absolved. I may be willing to
entrust my property to one & not to another
see 2d 178. Co J 244. 7 East 4. 5 R 606.

Judge Gould thinks that the assignment
in such case is a break of trust in the pawnee
& man may forfeit by his crimes whatever
he can transfer by his contract. Co Litt 8.
1 Bac 238. 12 C 12 Co C 556.

and yet a man cannot forfeit by his
crimes if pawn is before the day of paym^t

1 Ves 359. 1 Bac 233.

If he can assign he may assign to a
villian wholly unworthy of trust.

Answer. ~~with a signature~~

It made a pa*n* to B. B before the day of
h*a*nt pa*n*ed it to C, & b*o*t his bill
a*g*t C and the it held that it could not
redem with paym*t* to C & as debt to B.
B's debt to C, but in this case no tende
or paym*t* was made on the day if it
had been a ct of court & not have
entertained the bill; then it made no
difference with it that the assignment was
before the day of paym*t*.

Again another analogy neither the pa*n*
itself nor the pa*n*ee's interest in it can
be taken in & y^r n*o* if the pa*n*ee's interest
cannot be transferred by law it cannot be
in the act of the party
1Bac 238. 152. Dyer 6161 even 124.

Again the pa*n*ee may forfeit his interest
by his crimes 1el 174. 1Bac 241. 1Bac 238.

From these authorities I b^r think that the
conclusion is inevitable,

^{the} pa*n* is applied with cou*rd* to tender
must be made to the pa*n*ee & transfe*r*
in 1244 5. 1el 176. 9. 1Bac 238.

Pawn. Redemption.

It was once deemed essential to a pawn
that the deliveror was at the time of the
creation of the debt, but, the rule is
now different Yelv 164. 2 Scov 30.
11 Bac 231. 1 Ves 350. 9.

Formerly doubted when no day of paym^t was
appointed by the contract whether ^{whether} ~~le~~ a
paym^t after the death of either party was at
law, & w^t the property in the pawn.

Now however hold that the pawner may
redeem any time during his own life (provided
it is now held the pawner does not ~~and~~ demand
the redemption soone) Crof 244. Yelv 178.
11 Bals 24. 2 Co 79. 2o Raym 434. 11-278.
2 Cane 206. Yelv 179 in scholast.

But from the case reported in Ch 67
22 Vol 178 it seems that the pawner
in this case must redeem in 12 mon^s & on
day or the pawner may sell & pay over
the effects. sed 2u. This seems the reasonable
rule, 1

The Ex'r then according to the rule can
in no case at law redeem 1 Bals 29.

Crof 244. Yelv 178:4. See in Ch 420.—
(i.e where no time of paym^t is appointed)
But in Equity the Ex'r in such case may
redeem 11 Bac 231 239(1), unless the pawn
has been sold ^{antedate}

(120.)

Common & special carrier, &c.

When a day of payment is fixed in the contract
it is clear that the sale may be made on
the day in case of the payment, death before
the day, 1st July, 1834

The delivery of goods to be carried or not
with something is to be done for the
doing of which the bailee is to receive a reward

This is a carriage may be to a common
carrier or other person according to the
exercise of some public employment or
to a person in his private capacity,

as regards delivery to a private person as such
or merely incident to a trading factor
and not merely incident special carrier to
to an existing farmer.

See the bairment being mutually agreed
the carriage, ordinary care & no more
2d Recd 9th. Recd 4th. Month 12th. This
4. folio 4. 22. 82. 121. 4. 131. 33. 4. 138.

11

Special carriers to

In case of robbery ^{failure} of this class
are generally excused, & damages prima facie
so. The robbery here supposed is one in ^{Donegal.}
which face is unperformed, which the bairn ^{130:8.}
cannot resist, & which he has not wantonly ^{Co. Fert.}
exposed the property to. ^{Holt 131.}
^{46c 84(a)}

In case of loss by bare theft the user is if the
property was locked up or kept with ordinary
care the carrier is exempted from 133. Menth 14.
To Raym 9/18. 2 Oct 5. 1864.

According to Sir Wm if silver is delivered to a smith
to be wrought into a vessel the loss of the silver is the loss of the vessel. Jan 389. This opinion
appears to be founded on the principle that
the property does not change so much altered that the
article originally intended cannot
be identified as in case of wheat converted
into flour, grapes into wine &c Bi 404. Pohk 38.
For these reasons Sir Wm concludes that it
would not be the intention of the parties
that the same silver shd be specifically
restored in the form agreed upon,

But I think that if the iron delivered remains
specifically separate from the other funds of
the Smith & Co's the ragger that the
Owner must bear the cost since it was lost
in the negligence of the Smith's,

Special carrier's "skill"

whose property is delivered to one whose profession is to labour in such articles for the purpose of having such labour done for him the law implies a contract not only for ordinary care but for a skill.

14 Be 151. Jones 728; q. 14 d. 1. 11 Co 54a 3 Be 105.
1 Rand 324. Esp & Cn. "Skill in the case"

as horse d? to be shod & cloth to a taylor to be made up. - or by profiting a trade the bailee holds himself out to the world as skilfully executing to him the ordinary care required here & conscience does not oblige the bailee to insure agt fire, but usage must decide in such case, & the quality & the thing carried. Ex commission merch't in certain cases must perhaps be insured.

* If goods d^r to any of the fifth class are lost or destroyed by the bailee's neglect while the work remaining unfinished it has been a question whether he can charge the bailee with the work, but the bailee has not been benefited by the work so the master who by & not benefited is the fault of the bailee.

- Com; carrier. Who are considered as com; carriers,
is any person in com; who makes it his
employment to transport the goods of others Lo Raym 918.
from place to place for hire - 4 Co 84.
- Stage drivers who are accustomed to carry Cro 9330.
goods for reward 1 Inv D 390.
18618.
17 R 27.
Exp £ 64.
1 Inv D 390.

Formerly doubted whether any other than
a carrier by land was to be deemed a
common carrier. Ho 617. 18 Cro 9330. Jones 149. 51.
12 M. d 487. The law was first extended to
Hoymen in the time of James I. & to ship
masters in Chs 2^o. Ray 220
Lo Ray 911
Jones 152
1 Vent 190
238
2 Rev 69

Ship owner where the ship is employed in Exp £ 627
carrying goods for him are also liable 1. 1 440.
as com; carriers, and in case of loss the 17 R 18. 78.
action may be bro't ag' the owner or ag' 3 L. 2 59
the master. By law much master's liability is Recd Barth 62.
There is an English st on this subject
7 Geo 2. 26 Geo 3. the effect of these stats 1 R 18. 78
is to limit the liability of the owner in Marsh 160.
certain cases to the value of the ship &
freight. We have no such stat: t.

Bancroment.

Common carriers

of com. carrier by becoming ... & implaus. untrustables to care all goods, (to the extent of his convenience) offered to him of the hope is offered to him with the goods & if he refuses he is liable in an action on the case. Bull 70. 1 Bl 166. And 163. 2 Khou. 327.

of com. carrier may make a special acceptance, in impose reasonable terms as conditions of his acceptance, it may make the condition that he will not be answerable for damage done to goods he has notice of the articles & receiving pay for the carriage of such if such conditions are unreasoned & not complied with he may refuse to accept

The limitment in case of com. carriers is beneficial to both parties & according to the genl principle he wd be liable only for a reasonable amount & thus was limited the extent of his liability given to the time of H. & Ch. Jones 144.

But his liability has been gradually extended from principles of policy & the rule now is ~~that com. carrier is liable for all accidents~~ 3 Bul 1593. occasioned otherwise than by the act of Bull 70. 1. use of public enemies & of the law of nations her f.

West Coca

1 D R 27. 34

1 talk 18. 1 Wilg 286. 1 Pale 253. 122 608. 1 2nd 39.

Solidarity of common carrier.

of com: carrier who carries goods gratuitously is not liable to the extent of the value when he is not then a com: carrier but a mandatory carrier 415 esp 8 & 21.

of com: carrier is then in nature of an insurer agt all accidents except those of his negligence.

Inevitable accident so called as being 1 R 89
to be one which could not have happened 1 Ste 12.
in the intention of man. Fire not, 1 Aw D 391
occurred by lightning is not considered
as inevitable accident. 2 412 E 113. 1 R 84
esp 2 & 20.

In conveyance in water the knowing of rats
that the ship is not deemed negligent.

1 Wil 281 Bulk 70 Jones 141 1 Aw D 391.

of com: carrier is not liable for the acts of
public enemies if pirates are deemed
public enemies but not so liable or
mobs neither are fresh water pirates
public enemies. 1 Bent 239. 13 R 18. Esp D 620.
1 Bent 190 1 Col 85. 1 Aw D 391.

But if intent a step of another to make
it necessary to throw the goods of a
freighter overboard the carrier is excused.
12 Co 63. Esp 620. 2 Bus 280. 2 Rob 567.

Jones 151.

Bailment. Common carrier

There is a case reported having where the master threw overboard a box of jewelry in which it was held that the master may not be excused *all the time*. Long, 151.

The principle must have been that the throwing overboard of such a box was a carrier's act & could not have been of any service to the safety of the ship.

But in case of such throw overboard the owner master & freighters are liable to arrears, not so with passenger; East 220. C & R 407; Beans Lex coll 143. 3 Bac 894. 5. Clark's 3406.

If common carrier wantonly negligently & unreasonably exposes property to risk of accident by a stowable article. 1 Conn. 437. 1 Am 391. 1 Conn. R. 457. 9 H. 620.

against the common carrier is excused for an act
committed by the act of the carrier himself
or where it is committed to be a cash box
while it is in a state of preparation
Hall 69. 74. 84. 85. 21. -

If the carrier charges a full value of
carrying the goods & the carrier takes
1 Bac 344. them & does not happen to do this it means
that he here is not liable to the extent of
the full value. He will however be liable
for assault.

Liability of Common Carrier.

But to subject the carrier to the extent
of the value the goods must have been
in his possession & under his control. In 2392.
If then the owner is on board the ship 394
taking the charge of the goods (^{If he signs the} 2B4B416
charge & forwarding documents)

But if the carrier negligently delivers
to the ship the carrier is liable not
indeed to common carrier but for want of
attention case esp L 621 Balljo. stra 620.
1 Mar 344. 2 Jan 317.

The principle is that the goods are
not deemed to be in the possession of
the carrier. But if the owner signs
a receipt & a paper to have the 1102
charge of the goods this does not. 2c 830
at all discharge the common carrier. This 4661
does not amount to taking the goods out of
the control of the Capt.

It seems that the carrier is liable till he 2 East 124
does not know the contents of a box 1104
which he has delivered him in a special case 415
acceptance, so his liability does not depend on his neglect Balljo
but on his negligence.

In one case the carrier was held law 393,
deceived with respect to the value of 21610
the articles & was relied on & was held 21610
liable, and in another case a
box contained full of the owner Oct 31135
apparatus, as a box of a book & on Oct 21136
itself the owner was held liable.

But these cases are singular cases 4 Ban 2200
stra 141. 1 East 612. Jones 143. and are
among other principles & must be considered
as singular. carrier is insured, the value affects the risk.
In insurance the risk must not be concealed much if misrepresented.

The unqualified Notice that the Master
will not be liable for baggage at all
cannot exempt him from his liability
He must I think be liable for his
own negligence - such Notice are common
in Steam boats & common carriers may
impose reasonable terms, private carriers
may I conclude impose any terms.

Document (c). Special acceptance

It is not necessary for common

or the purpose of making a general acceptance bearer,
that the holder be a general commissary, or
between the holder & carrier. & if the holder has
published his terms, the carrier determines from
the circumstances whether the holder had notice
of the terms. 4 Barn 2248. Cart 485. 14 B. 271.

1 esp 3022, 8 3d 531. 17613C 293. 300(1).

Under a general acceptance except where based
 on a particular bill on the carrier he is liable to the (A)
 amount of the full value of the goods. but, Cart 485
 under a special acceptance the carrier if esp 2.62
 not informed of the value will not be liable. But if
 the amount of the acceptance exceeds the value
in the box containing £500 & the carrier makes
the terms that he will not be answerable
for money unless informed to the box containing
 £1000 he is liable only for 500£.

and a common carrier may indeed bring a bill 14 B. 248
 more strict viz that he will not be liable 4 East 371
 for any part of money due to him unless he is £50564
 informed of the content, & if the holder accepts the bill
money so informed & here the carrier will
not be liable at all. This is a reasonable condi^tn

Common carrier,

The master of a stage coach who carries Contra R 25 passengers for hire but who charges nothing extra 252 for the baggage is not liable for the loss or damage of the baggage. Ex parte Jones. — This can mean Esp D 6224 no more than that he is not liable as 1 Bac 344 as common carrier for the baggage. And even 2 B & P 419, the rule thus qualified seems to be innocent. The fare in fact extends to the baggage. And such is the rule in case of any other person.

et com. carrier is liable as such with any express agreement to pay the hire for there is an implied agreement 1 Bac 343

To charge a carrier it is not indispensable that the goods should be lost in transit. He is liable for a loss at the inn where he arrives if the custom is to deliver to the consignee & indeed unless there be an established custom that he is not bound to deliver 2 Blk 916. 7 3 Will 424. Esp D 623. 1 Bac 345.

Where the usage is not to deliver to the consignee but to keep the goods in the ware house of the carrier he ceases to be com. carrier when he delivers the goods at 4. R 581 the ware house according to custom, Esp D 623 but he may be liable if he receives any thing for storage for want of ordinary care and if his storage is gratuitous. It seems to be liable only as depositary but it may be so that his compensation as carrier extends to storage.

Who sh^d sue the carrier in case of loss?
 if the consignee directs w^that carriage the
 consignor shall send them the consignee is Cons 294
 the person who must sue the carrier for any S.R. 330
 loss far as the consignee directs he is in Cons D. 576
 fact the bailee & the consignor acts Bull 35
 merely is agent and here too as between 1 P. & 2. 343
 the consignor & the consignee the consignee 353
 owns the goods & must bear any loss.

But if the consignor directs the carrier the
 consignor must sue the carrier

(so if the consignor makes himself liable by
 agreement to pay the carrier & assumes the
 risk of the damage the consignor must
 sue. S.R. 333 5/Bar. 2010. 1st R. 659.

+ In, vide opinion of Lawrence in Danz. & Peck's R. 333
 2 Comyn C. 318. 19.

But if one sends an order for goods to be sent by a com. carrier & the consignor sends them by another carrier upon the proper route the risk is here the risk of the
 vendor & the consignee must sue it
 the consignor makes a contract with the carrier
 ut supra. He may sue on the contract
 tho' he may not sue in travers.

Common carriers,

It is said that upon an action of tort
against ship owner for loss of goods carried
that the action must be brought all at
the time unless if the owners are joined
in the contract then must all be sued
but if the action sounds in tort one
or all or any of them may be sued
tally in joint & several. 1 Jack 440
esp 20/8. 5 & R. 649. 651. 3 East 62: 70.
The liability of the ship owner is founded
on the fact that the master is the servant
of the owners.

But even in case of an action sounding in
5 Ban 26/11 last contract the owner sued cannot take
2014 advantage of the non-jurisdiction in any thing
5-7 Nov 7 but in abatement forming otherwise
Jack 440.

It says Poll was a common carrier & liable
as such for at least he was a private
undertaker. He was not appointed by carrier
until 12 Chas 2nd. But Poll is not now a
common carrier. Jones 153. 1alk 17. Cork 754.
764. — The Post Gent's not liable at all for the delinquency
of Post Masters. but Post masters are liable for their own
negligence and perhaps for the negligence of their clerks &
servants. Slay 5463. 7 Ranch 212.

1133

The ancient books treat the liability of
a com. carrier as founded on the custom
of the realm, but this custom is merely 13 Ed 245
a rule of the common law. The allegation Hanc 485.
if the custom of the realm is wholly 46 Eliz.
unnecessary the judge ex officio takes 12 R 33.
notice of the com. law.

Rolls 227
Jones 130

When property is stolen from a com. car.
or otherwise lost or injured he being
guilty of no misfeasance a special
action on the case must be brought but
if he is guilty of a misfeasance there
will lie, by a special action on the case
ex delicto or upon his, for a misfeasance
is a conversion. Dalk 655. Esp D 590.
5 Ban 2827. & Co 146.

Inkeepers fall under this second branch of
of this fifth clap. Jones 130: 2. Esp L 625. 6.

Inn keepers.

Over the bairment is mutual advancement
and according to the rule is also
be liable only for ordinary neglect, but
the keeper of the inn has limited his
liability Jones 133:4, 135(a), But his liability
is not quite as extensive as that of com. carriers,
he is liable for any loss occasioned
by his servants ~~in any manner~~,
esp. 326. 8 Co 32:3. 1 Bl 430.

Story 51110 If the goods of a guest are stolen by
a stranger the keeper is liable whether
he has used ordinary care or not
Cro 224. 8 Co 33(a). Cro 119. Jones 134.

But if the goods of a guest are stolen by his
own servant or traveling companion the
keeper is not liable nor is he liable
for theft committed by an one who
lodges in the same apartment by the
request of the guest. Cro 285. 8 Co 33(a)
Cro E 285. Cro 189. 224. 5 2 R 276.

Story 5473-

Story 5309. On innkeeper is liable in case of loss by
It seems he common robbery? the innkeeper has as
is not liable
in case of
robbery & burglary, it can be said: 8 Co 32(a), Jones 135(a), &
Gerson from
without the inn
no further
of a mob? Many means of colluding with robbers
is 132. Picard p. Jones says that a
free trial will be given to all because the
innkeeper the it will not a com carrier

By the Roman law the master was responsible in the act of his slave in case of
unintended accident but it seems that
one can do g^t not extend his liability
quite so far ^{Co 33 Ad. Expt 22, 23.}

But the doctrine ⁱⁿ ^{the} Co that he is responsible
not liable with defendant in himself
a servant is not law.

He is not liable for goods unless they ^{1 Co 33, 3}
are intra hospitium. But the hospitium ^{Expt 22,}
includes stables, outhouses &c.

If the goods of a guest are removed from the
inn at the direction of the guest the
innkeeper is not liable with negligence on
the part of the innkeeper ^{Co 32 Ad. Rul 4.}
Bull. 173. Et lase to pasture. Expt 527

If the goods of a guest are lost the burden of proof
lies on the innkeeper to show that they were lost in such
a manner as to discharge him from responsibility.

Stay 5471.

VII Mandatum, or delivery of goods
to be carried or taken some where is to
done with reward this is called by
Post to acting by commission, Price £54.
Bull 73.

This case is like that of a depositary
except that the duty of a mandatary lies
in possession the other in custody.

Dray 904 On principle the mandatary is liable only
for gross neglect under a general acceptance
of all risks and such is the genl rule as established
H.B.C. 158 by authority tho' the rule has in some cases
been modified away

But there may be an express or implied
undertaking on the part of the mandatary
to use all necessary skill, 3 H.B.C. 161. 2. 16m. 74.
A doctrine advanced in H.B. is that
1. 4 B.C. 158 if a mandatary engages to use any
Dray 919 degree of skill the omission of that
degree of skill is of course gross neglect
but this rule confounds all distinction
between gross & other neglect

If one undertakes gratuitously & voluntarily
to do something in the course of his
profession he implies an undertaking to use
all necessary skill.

3 BC 1656
164 BC 158
160 BC 157
15 and 324
Sept 601

See 601 makes a distinction between the duty
of a mandator when it lies in his care & when
it lies in outside or carrier & says that in the
former case the law implying an engagement to
use up reasonable care & diligence, but it
can find no authority or reason for this distinc-
tion.

1.4 BC 158. 3 BC 1656

This is beyond the liability of the mandatory
beyond that of a private officer of the state
etc etc.

Where there is no express engagement to use
more care than the mandatory takes of his
own goods the mandatory is not liable for
less than gross neglect. 164 BC 158. 1 BC 255.

But if the undertaking is in the course of
the mandatory's profession there is an implied
undertaking for skill (anti) and when then
this implied undertaking does not extend
to any thing except the skill, not to the
resulting, see Raym 918. Rule of P. 3. 1 BC 255.

Illustration

But neither a manufacturer nor any banker can exempt himself from liability for fraud, for such an agreement, contra bonum mar.

Jones. 66. 77.

It will seem from some expressions in the
two books that the manufacturer is liable, even
though for tort & never in the Contract, but
this is not correct, the contract
is valid & is made up suff. considerately
Sir 143 2d Haynes 3d. 10. 2c. or the delivery of
Satisfying the goods into the hands of the manufacturer
relieves him of his right to recover any damage sustained
Talbot 34.

2d of 667. 3.

(Vol 128 contd)

3 castor

One says where the manufacturer is in control of
1st vols 394 the manufacturer is liable if an acceptance
of the person promising is liable. But he has
no authority & is not liable if the promise
comes from him & liable for the fraud but
the promise cannot be binding it is
ab initio void & the special damage cannot
make it good Jones 71.

In what cases has

the 4th lein is a direct claim to incumbrance
upon the property of another for the security of some debt or duty accompanied
by actual possession, lein are general or special,
the latter are founded the former require strict proof

of lein I G think exists only in the 4th & 5th
clauses of bailment, in the case of pawn
a lein is created by the very delivery with
any thing more the lein is consummated in 92445
by the delivery but in the 5th chap the Alkk 522
lein is created by the performance of the Yelr 178.
Contract by the labour or carriage,

Drein ch⁴.
EHD 583.

Most bailed of the 5th chap when they
have performed their undertaking have
^{special} a lein for the price of their labour in No 142
case of pawn the lein is created by
contract in this case however the man
creates a lein without any contract.

But a third person who wrongfully obtaining 3 East 585.
the possession from the bailee cannot take 29 R 485.
advantage of the lein of the bailee
the bailee may sue the wrong doer & that
with tenderness to the bailee the price
of carriage.

to Aug 167. common carriers have a claim for the price
till Oct. & carrier until the price is paid, the
carrier can will not oblige the carrier to
invest in being paid before having the bill
may be so.

And if goods are stolen & delivered by
the thief to a common carrier he may
Aug 167. detain them from the carrier until paid
for the carrier is bound to receive the
goods

Aug 167. the innkeeper may retain the horse to offset
his guest for the expense of keeping the
horse 318. horse,
Ball 45.
Sep 25 1674.

if a horse thief takes the horse to an
inn the innkeeper may retain it till the
carrier, Aug 167. Deph 128. 174. Sep 2 1674.

so too the innkeeper may detain the
horse of his guest until her whole bill
has been paid, a horse can be detained
2 hours & a quarter the expense of her keeping it
1 hour 269. paid

But a man is always lost by a voluntary abandonment of his property, if the goods have wrongfully taken by the owner the rule is diff^r. 14a 557. 1 Ball 443:4.
1 East 4.

If a tayfa or other mechanic has a ^{special} lien on the materials until he is paid Sec 147 & 1
This lien is annexed in behalf of trade & 642
& commerce. Yelv 67.

But I think that when a mechanic has been in the habit of trusting an employer for work he cannot insist on a lien unless the mechanic gives previous notice. 1 Bac 240(b)

But a lien does not exist in favour of 14c 107
all bailee of the 5th class. Ex an agent 1 Ball 45
farmer, has not the lien Ex D 585
1 Bac 240.

The capt^r of a ship has no lien on the ship 14a 400
for his wages for he is supposed to know the condition
owner, & to submit to their responsibility. 14a 400.
Dalk 33.

1 Rollod 440

1 Ball 49

Ex Raym 632

576.

But the mariners have a lien upon her, & the
crew of a ship when they arrive at a port where

wages are payable they may libel the ship
in a facias et of admiralty & have her
sold, being 450. strea 487. & day 10.
ablot 450.

But when there is a special agreement w/
the bailee rei, he has no lien for
when there is no express agreement the law
implies more of than a bailee agrees that
his reward shall be paid at a certain
Merv 6. time after the delivery to the bailee
which must deliver & wait for his reward until
the 1st of May the time of credit has expired,
5 Bac 27.

2 Lin 1071. in this principle it was held that when
there was made a price fixed that the
Broker's price had no lien but they cannot be
collarsht 345 ian.

344. Merv 6(2). 13 Raynt 14. (2 Ph Er 123).

A factor has a lien on the goods of his
principal & the same rule holds in favour
of mercantile agents & mill Brokers.

Illustration to rd. Vide Blast & York

37 R 119. Comyn & Merchant (14 ethm 6) 254.

1 Ban 494. 2 126 R 1154. Esp £ 108.

2 Kent C 62. A lien does not give the party having it a right to sell
the property detained. satisfaction can be obtained by filing in Eq. 2.
A factor has as such a lien tho' the law
or broker may undoubtedly detain the
property until the time is at exp'd
Merv 172. 1 Bac 240.

Esposito & Collaudatario, have no claim
& can from the nature of the instrument
have none? —

General claims can be established only by express contract or (2 Kent C 640)
by strong evidence of general usage — The following classes of persons have been
decided to have general claims. Attorneys, factors, Bankers, Dyers, Wharfingers,

If my person fails as his own the recipient of
whatever the bailee ~~was formerly held~~ must deliver the
property bailed to his bailee 1 Ror 666:7.

1 Bac 237. 242 for it is said the bailee cannot
judge between the bailee & owner, but this reason
merely shews that the bailee w^t be justified
in redelivering to the bailee, & this I^t is thought
is all wh^t the rule means, thus if the
bailee delivers to the bailee pending ^{any} ^{Fitz 137}
action against him by the owner this ^{is} ^{not} ^{an} ^{absolute} ^{discharge} 1 Bac 242
bar, but this rule implies that the owner 2d & Ray 367
might recover with the delivery to the
bailee. & indeed of this there can be no
doubt for it is a good principle that
the owner may take his property wherever he
can find it.

But it was however that if a wrong done by 1 Ror 667
another's man's property & dies his ex' a must 1 Bac 237.
redeliver to the owner & that a redelivery
to the bailee is not a discharge to him for it was said
~~Ex' a com'nt to Poppey for by law t' must deliver to him who has title by law~~
~~but this is not so~~
judge between the parties better than the
testator —

But the law on this subject is very different from what it formerly was. 1st the bailee may always deliver the property to the owner of it, in case of real property in general a tenant must restore the possession to him from whom he received it, but it is otherwise with chattels. If therefore the bailee was not owner, as if he stole the property or claimed it by a defective title as was himself mere bailee of it, or had possession of it as servant of the owner in an even case, the bailee may lawfully restore the property to the true owner and in case of a transfer of property either by contract or by operation of law after the bailment the bailee may lawfully deliver the property to the new owner.

18am F Adolph It seem, too that on demand of the property by the owner 450 in case like the foregoing the bailee is bound to restore the property to the owner & may be subjected if on such demand the property should be retained by him

Story 5102 May the bailee after such demand redeliver the property to his bailor and thus bar the owner from an action ag^t him (the bailee) ?

Before demand made by the owner the bailee may I suppose restore the property to him from whom he received it & if he does so he is guilt of no conversion of the property.

Bailments (c/o 4)

There are cases in wh^t the bailee sells the property of his bailee as his own & in wh^t the goods of the bailee are seized on & ag^t the bailee. The sole rule is that when the goods of one person have gone into the hands of another wrongfully the owner may take them and where persons intend they are sold in market or at

In Eng^t by 21 stat 1 if a person becoming bankrupt has in his possession under & 10th 106 disposition the goods of another by the 11th 111 monies owing to these goods are liable for the 11th 348 bankrupt's debt, & goods left after sale 75 R 228. in India, possession the 2nd of the vinda in 50 R 12, one of his bankruptcy may take the goods.

This stat extends only to cases in wh^t the bailee becomes bankrupt 20th 67.

This stat does not proceed on the ground 11th 364-37 of fraud but because false credit is given 20th 506 to the bailee by the 1st possessor of the bailee property for possession is prescriptive evidence of property,

Statute of Bankrupt

If then the master can prove that the
goods were purchased bona fide they
will not have to sue since the master
was not reckless or negligent & in respect to probable
order & distinction

27th. I think that consistent with a majority
of the C & of the family principles of
the C & that when one of the innocent
persons must suffer by the act of a
third person he who caused the damage
ought to cause the suffering. But see the
last.

But this stat does not extend to goods
possessed by a bankrupt in respect of another
Ex C & so far those who have the beneficial
interest cannot deprive the Ex of his
10th 15th possession, they are in the Ex as before on
30th May 1724 except it can't be the act of the
30th June persons having the beneficial interest,
some of such done, some of such having
the sole beneficial interest of the cargo

The stat. however extends to the mortgages
of personal property when the mortgage
contains in provision by permission of the
mortgagor / art 165. 172s 348. 1 Mil 260.

Expt D 562. Rob 72 457. 449. 1 Mil 189. 190. 220.

This rule does not hold of mortgages
of land or of chattels real, for a mere
proposition of sale estate is no evidence of
property.

Again the stat. does not extend to the
sale of a ship at sea, because here
immediate possession could not be given / art. 60
but the master must take possession as 1 Mil 361. 2
soon as possible after his arrival 551.

Rob. 56. 1 Mil 361. 2
362.

28 R 462,
Expt 566. 8
26 R 415. 40

And there are other cases in which actual
and immediate delivery of goods sold
is not necessary to secure the vendee.
Ex the vendor delivering the key of the store
in which the goods sold are /

71 R 71.
2 Extra 955.
Expt 577.

But to bring a case within the statute render must have been in the care as of his master's or in the language of the statute they must with the Vendor's consent be left in the holder's order & disposition of the vendor. Then a temporary physician for a particular purpose of the vendor if so far does not give the vendor's - the vendor becoming a bankrupt a right to the goods. which the good are put into box & remain for a convenient opportunity to transport them.

he bankrupt in position then must with
the court's consent appear in all respects
to be bankrupt the court to bring a case
against him & if he is found guilty the
court to make him bankrupt, in which it is
no evidence of his bankruptcy that he has
the opinion of an expert & deposition the expert
is not applied. Ex factas, private banker,
in Engt. commonly called Goldsmiths.

In common cases of bailment where the bailee is not with the owner's consent in the admn & disposition of the goods bailed they stat. does not obtain & the owner will hold aqst. the creditor of the bailee & not a bona fide purchaser from the bailee except in case of sale in market over. & the place is London 28th 44.
of a horse & carriage. for it is so common 1 Niles 5
a thing to hire & baray carriages & horses Lith 1117
that the possession of them furnishes no Jack 283
evidence of property.

The rule of the common law that the owner may claim his property, into whose own hands Jack 126
they come by the act of a third person 1 B&M 452
does not hold of money banksupt bill 458.
and negotiable bills bancorables by delivery, 3 B&M 1510.
If then I deliver to A as depositary money 16 C.R. 45
and he in breach of trust pays out the money and 3/4
to a bona fide receiver, I cannot claim the 579. &c
property agst. the bona fide receiver & here
the fact of the depositary's bankruptcy
has nothing to do with the case.

We have no such st in Conn't as this of last
but we have adopted as our common law
the reason & spirit of the statute,

to bring a case within the principle of this stat.
two things must concur the bailee must have
brought or received & say the bailee must
with the ~~owner~~ ^{consent} suppose to be the owner
of the goods, if it be so the possessor cannot
lawfully claim back the goods, because
because it is against the owner or it was his
consent at the time.

and where the bailee is innocent
the defendant must show the bailees possession
was with the owners consent and as to one
the bailee is his credit.

18812:1 248. Quo. So. Rob. 3:2. 550:4 pl.
Corre. Rob. 2:34. - T.L. 67. 257. Corr. 2:115. 116:244.
Corr. 4...

if you are left in the temporary possession
of the master for a ~~convenient~~ & ~~reasonable~~ time
purposse the master will hold you ~~acc~~ &
the master.

I was once in a place where I bought cattle
& applied it to the service of town to help look
out, there is a & the master has to pay
of the master of it & reward him! -

If A's goods are sent to B for six months, they can
be taken by C when in each of the hands
of creditors, & it makes no difference where he presents.
But in 7 & R 24 leased a furnished house to B for a year. B's creditor took the furniture
left in each and is holding on said that the
creditor could hold. But this case was on the
principle that the house could not be taken
being a chattel real & the furniture
was merely an appendage to the house.
But in the case of garments the contract of B 1804
is fiduciary.

7 Eastc.

Bailor's right of action not extinguished

The bailor as he has a real property law
which by an action adapted to the nature of the
case not an steamer who wrongfully
200. takes or injures the property in the bailee's
2 Plaintiff possession
that.

The principle is that personal property
remain after it a contractive possession,
which is a right of possession,

Whence the bailor then at the time of
the injury, during a right of present
possession he may maintain trespass.
1 Sidk 438. 2 R.C. 569. 1 R. 410.

But if at the time of the injury done
the bailor has not the right to take the
goods at pleasure from the bailee the
bailee cannot maintain trespass or
treason. If then good and pounds for
six months or let for that period the
bailee cannot sue for an injury committed
during this period. 4 R. 419. 1 R. 410.
Esp L 513. 576. 72 R. 4. 1 John 412

after the time of the bailement has
expired the bailee for a subsequent
trespass or detention he may have trespass
or treason.

I. e. said that when the goods are taken
during the period for which the bailee has 1 Ch 3247
the felon's right of possession the bailee 1 Phi 1334
may have a special action in the case for 1 John 432
the injury to the consignee's interest. 1 Tim 315
1 Ch 3246

If goods are wrongfully taken from a deposit
or mandatum it injured in their possession
the bailee may maintain trespass or larceny
for he is in the constructive possession.
He has a right to prevent possession from
the depositor, &c.

And this, I trust holds in all
cases in which the bailee has at the
time of the injury done a right to
constraining the delivery, &c. in
the case of a carrier upon paying the
lasc.

If a bailee delivers the goods into the
hands of a stranger the bailee cannot 51 Bac 164
have trespass ag^t the stranger for the 261.
stranger is not a possessor wrongfully 1 Bac 237.
nor can he have torts butt demand dely 1 Rob 6617.
sc.

But if the delivery is a break of trust
but the bailee & stranger are ipso facto
guilty of a conspiracy

Rob 6617.
2 Raym 167.

Bailee's right of action against strangers
But in all other cases where the goods are
wrongfully taken from the bailee by the
bailee may have trapping a tort not the
wrong done in the fact ~~but~~ ^{of the goods}
§ Bac 165. 262. & Raym 270. Rule 33.
Sect 577. Rule 140.

and the true ~~fact~~ of ~~the~~ facts of ~~the~~
straits. Rule 33. esp 3 577. 47.

But it has been said that a party
cannot maintain the action because
he is not liable over for a loss.

§ Bac 164; 5 262. & Pitt 69. 13 Co 69.

But the mischif and the reason of it
are incorrect. the ground of the bailee
right to recover what is among other is
not his liability over, & it is his special
interest & lawful possession, § 512 372-5
esp 2 477. 577. stra 565. Court 264. 4002 404.
12 Ed 2 204. 2 June 360. 13 Co 69. Rule 33.
1 B 40? 44.

the bailee's liability over cannot be the
ground of the bailee's right for the it is
an action ~~but~~ the bailee has the stronger
cannot be the right, & lessening, of the
bailee over the it cannot be these two
things.

If a balee claims the goods to a stranger
the steamer man has no action except a
wring dñe, 1 B. & C. 607. June 20. 1822.

The auctioneer may maintain an action in
his own name w^t the balee & bider if
the goods are known to be the goods of an
other, same of a broker, 14 B. & C. 591. 2 H. & C. 403
1808. The reason is that those counts Park 403
make the contract in these own names. 14 B. & C.
same of master of ships who can sue & collect 1808
and of mercantile agents generally.

When the balee & bider may either of them sue the
steamer cannot be true subjected and a suit by
one has the action by the other for the full value 1 B. & C. 607
5 B. & C. 156. 263
2 H. & C. 504
It is sometimes said that if both sue he trial
just wherein will oust the other, but it is thought
that he who first commences the suit attacher
in himself a right of recovery which will oust the
other, of his action, this is the case when a serv^t
is sold & goes on the 1st of Novem. 1808. 17
3 B. & C. 579.

If the bailee has received satisfaction from
the wrongdoer he cannot afterwards sue the
bailee / do Rau m 21. G. o' C 24. 85. 3 dec 124
Sect II. c. p. 2 319. Vol 6.

But it is thought, that if the baile commences
an action agt the wrongdoer he b. that act
causes voiding his action agt the bailee.

If the bailee first commences an action for the
full value agt the wrongdoer he becomes liable
at all events to the bailor.

But the bailee may sustain special damage
independent of the value of the property; Ex
if lets a horse to B & the horse is taken &
recovered the value of the horse still B
may sue for, the damage sustained by being
stopped on the journey -

Remedies, between bailor & bailee.

If the bailee wrongfully takes property from the bailee the latter has a special action on the case agt. the bailor, or an action in most cases on the contract as in hiring, lending &c. 81 Bac 115. 266 Esp D 401.

But can the bailee have trespass or trover in such case agt. the bailor, & the bailee's right of action is founded on his special Esp D 575 property. the value of the property ought not to be the rule of damages. As it is in trespass & trover, but as between the bailee & bailor the bailee has at most only a term, a right of custody & use & this is the only right on which this action agt. the bailor must be founded,

In gen'l the bailee can maintain no other action agt. the bailor than detinue, trover or assumpsit action on the case. He cannot in gen'l have trespass

Bull 72.

Ergo 781.

Ergo 244.

3 East 62.

1 Will 282.

2 D 319.

But if the baile wantonly destroy the property
which the baile man has taken or let,
the master set the baile products and the
remainder of a baile, &c. &c. 14*c.* &c. 13*(d).*
sett 5*o* Park 19*1.* £² 12*405.*

The Innkeeper.

It is a law person may exercise the employmt of an innkeeper unless using sharts he is mulcted as to become public money and then the inn must be established and subject to an indentment as follows.

1st. 14. or 1594. & 1616. 3 Bac 17. q.

or 1595. 1

But an inn is becoming a burden is a
nuisance & too liable to be
subjectment,

4 Blac
1691
225

But in Eng: & in Conn: no man can
become an innkeeper without license this
is now the use in Eng: & in all the
New Eng: States.

The duties of innkeeper in jail extend no
farther than to the entertaining of
travelers & to the keeping of his place &
kitchen, &c.

1691
3 Bac 161
1632

But an innkeeper is not bound to protect
the person of his guest from battery &c.

If an innkeeper agrees to entertain a
traveller or guest in a most unreasonable
rank or ~~common~~ cause he is liable to an indictment
as well as to a civil action,
but he is bound only to entertain
travellers

He is not answerable for his liability for
over the goods of his guest by his absence
from it, a less certainty, this doctrine is founded
in policy.

17.12 But an infant innkeeper is not as such
3 Dec 12 liable for the liability of an infant
innkeeper is founded on contract,

2 Dec 13 But where all causes which will excuse an
Esq. 53. innkeeper from entertaining travellers
as members of his family. fulness of his house,

101

If a host receives his guest to look his
apartment & gives to be liable for
his effects unless he does. I think that § Bar 13
the innkeeper in case of loss cannot be liable
subjected.

§ 13 Bar 13.
158.

It has been contended that a man entering Co 33 64
of the key of a room to the guest dis- § Bar 13
charges the innkeeper except the guest
locked the door.

But this is now decided,

The host is liable tho' he is ignorant of
the kind & value of the goods of the guest
unless perhaps the host has wantonly received
Co 33. § Bar 13. 50 H 275.

The innkeeper is liable to the same extent as
in case of travellers, for the property of those
who remain with him for a long time
at the price given by travellay. But he
is not liable for the goods of boarders who
pay more than the price of board. Co 32 64
1 R. 23. 13 Bar 13.

He is not chargeable as innkeeper for any
goods or an absence of the owner for keeping
which he receives no price, but this rule
supposes such an absence that the owner
could not be considered as a guest.
3 Bac 183. 109 183. 59 H 273. Story 126.
Diph 174.

But for any profits in the keeping of which
209 183 he does receive a profit the innkeeper is
Story 126. liable to the owner to no guest,
Salk 188.
1 H. 63.

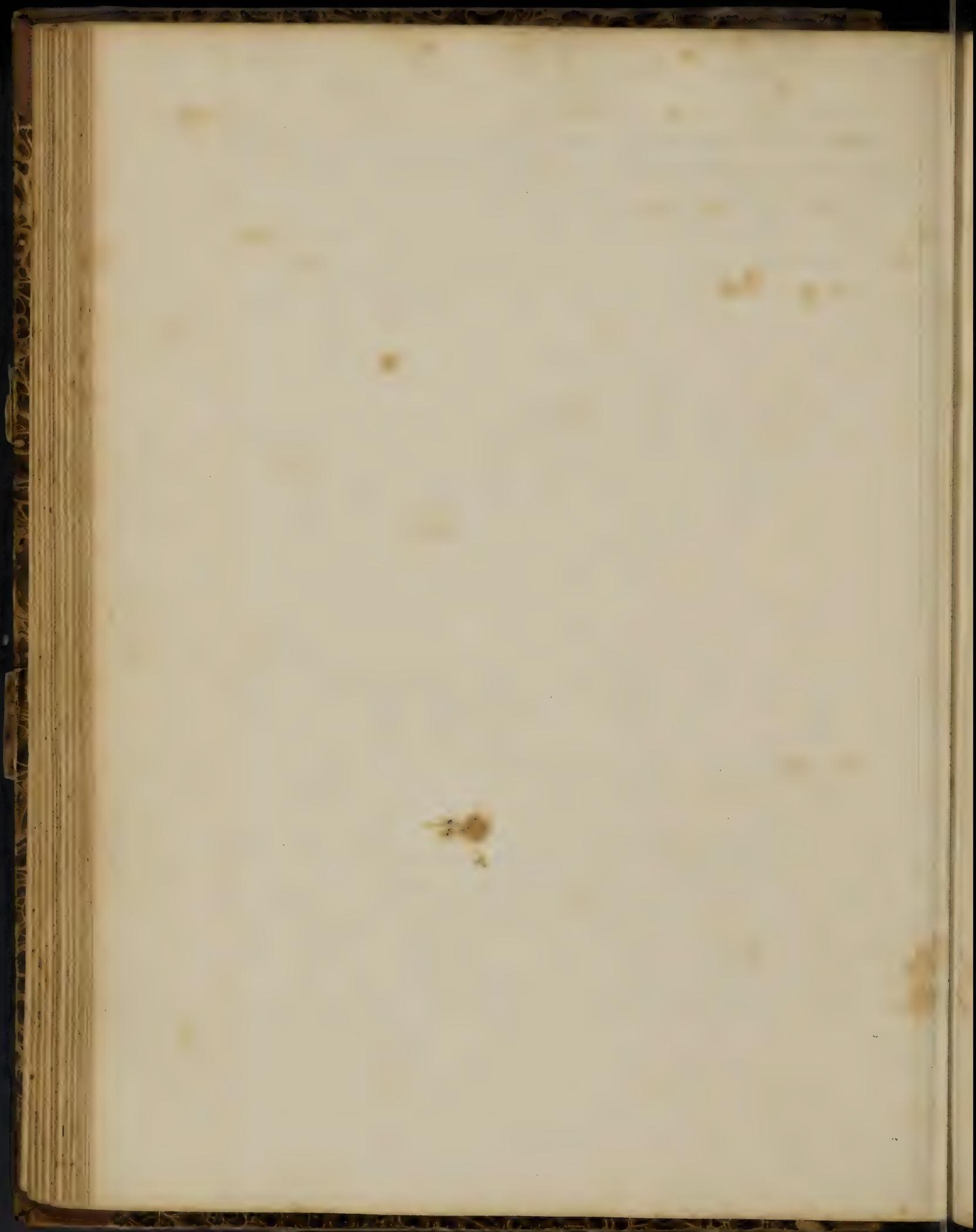
The innkeeper has the same actions agt. guests,
with any other person in such cases might
have, but he has also a lien on the
goods of his guest until the whole bill
2 H. 63. is paid.

3 Bac 186 And if the guest do or omit permission
from the inn without paying his bill the
innkeeper may pursue & take & retain him
till paid.

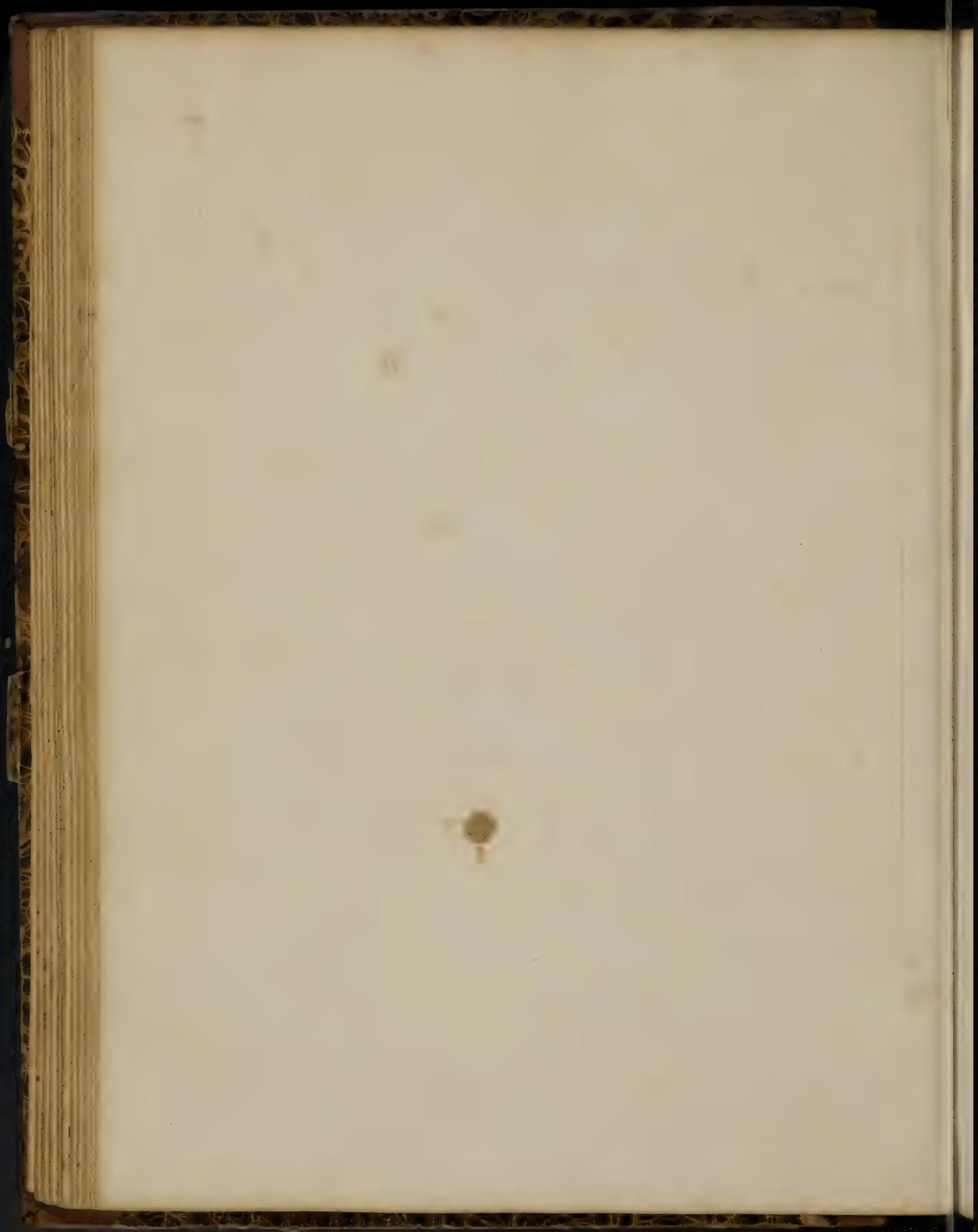
but if the guest by force, break the
landlord's door the house becomes more
after retaking.

(103)

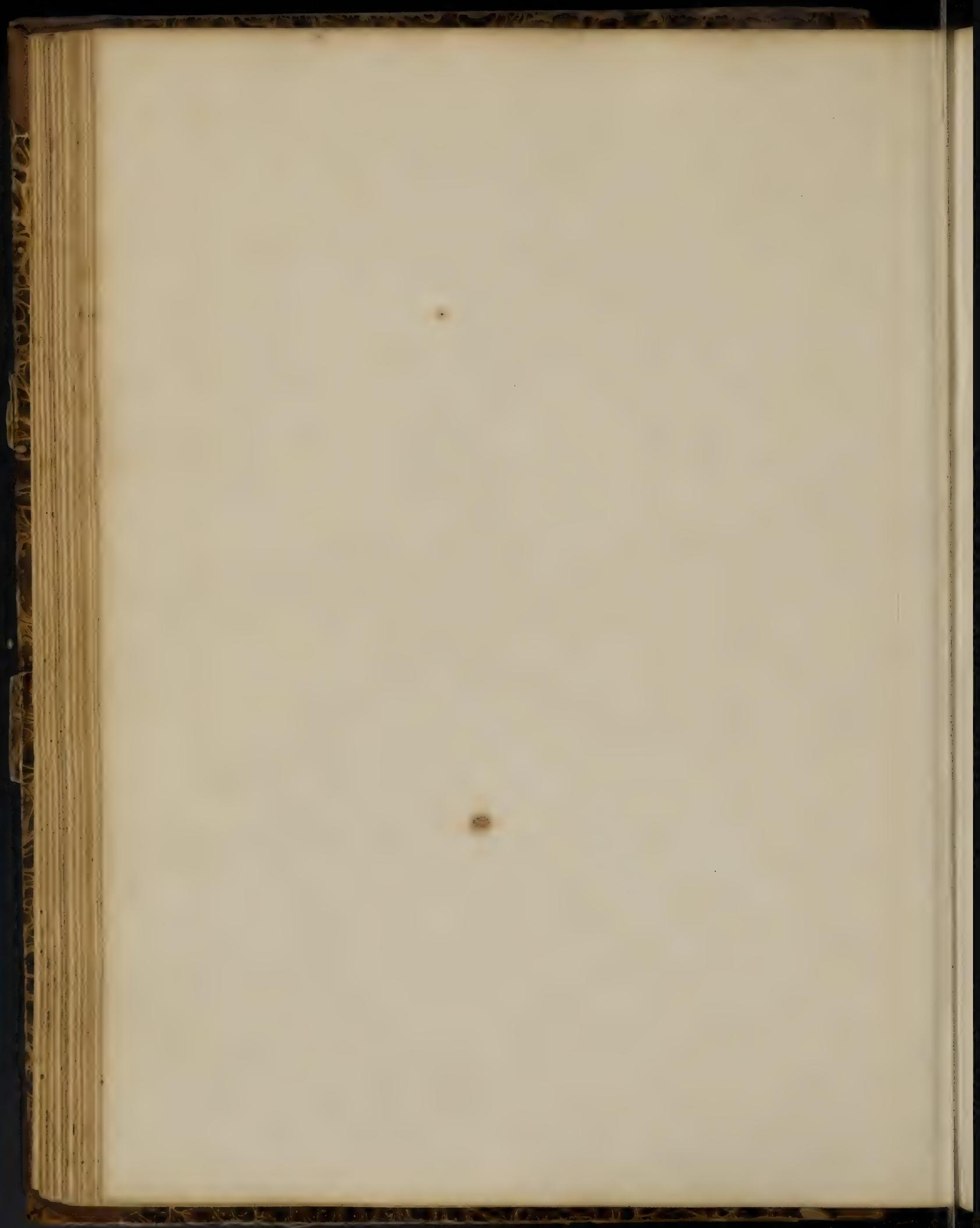
where he retains the horse & his guest
he cannot use him, Stra. 550. 3 Dec 185.



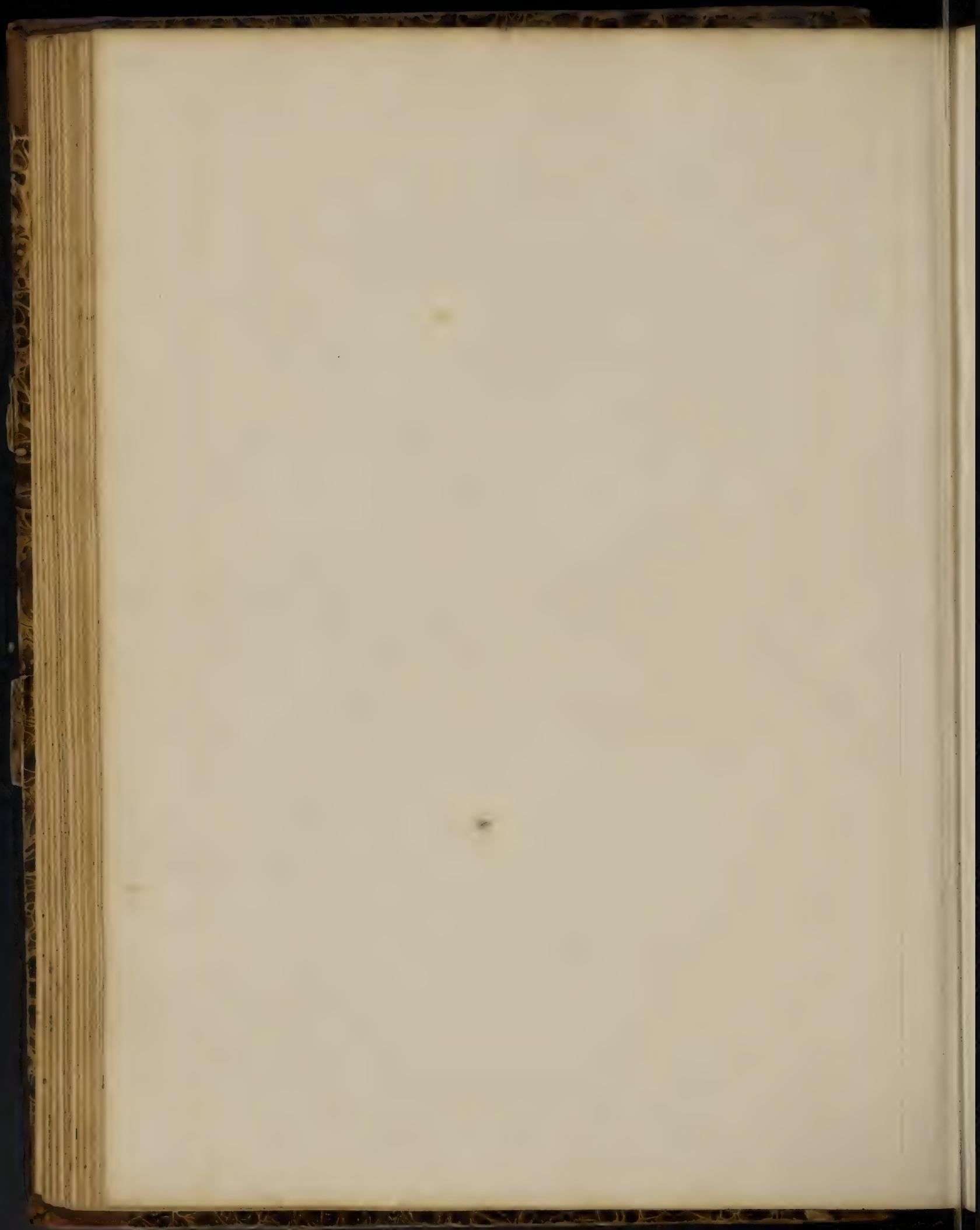
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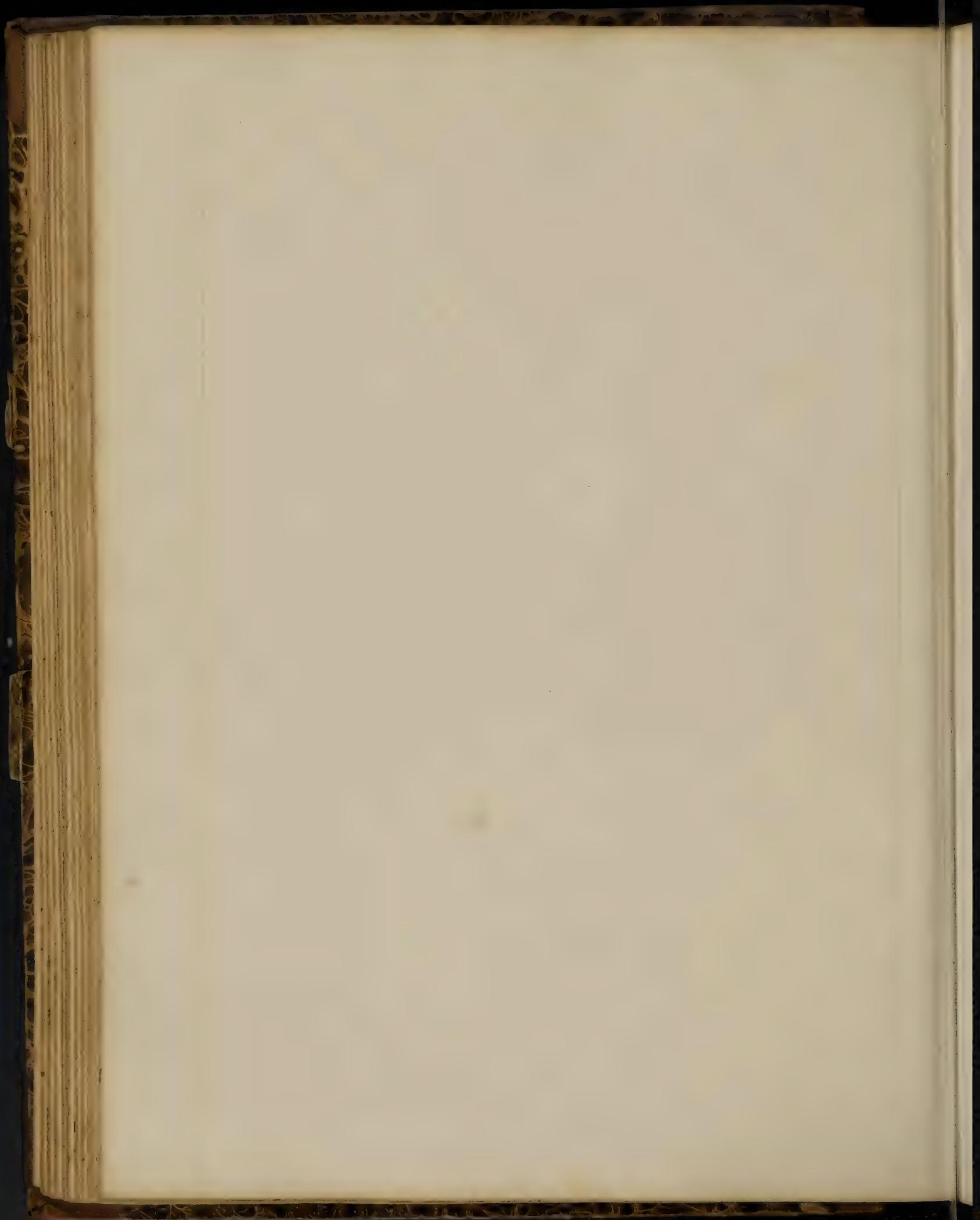
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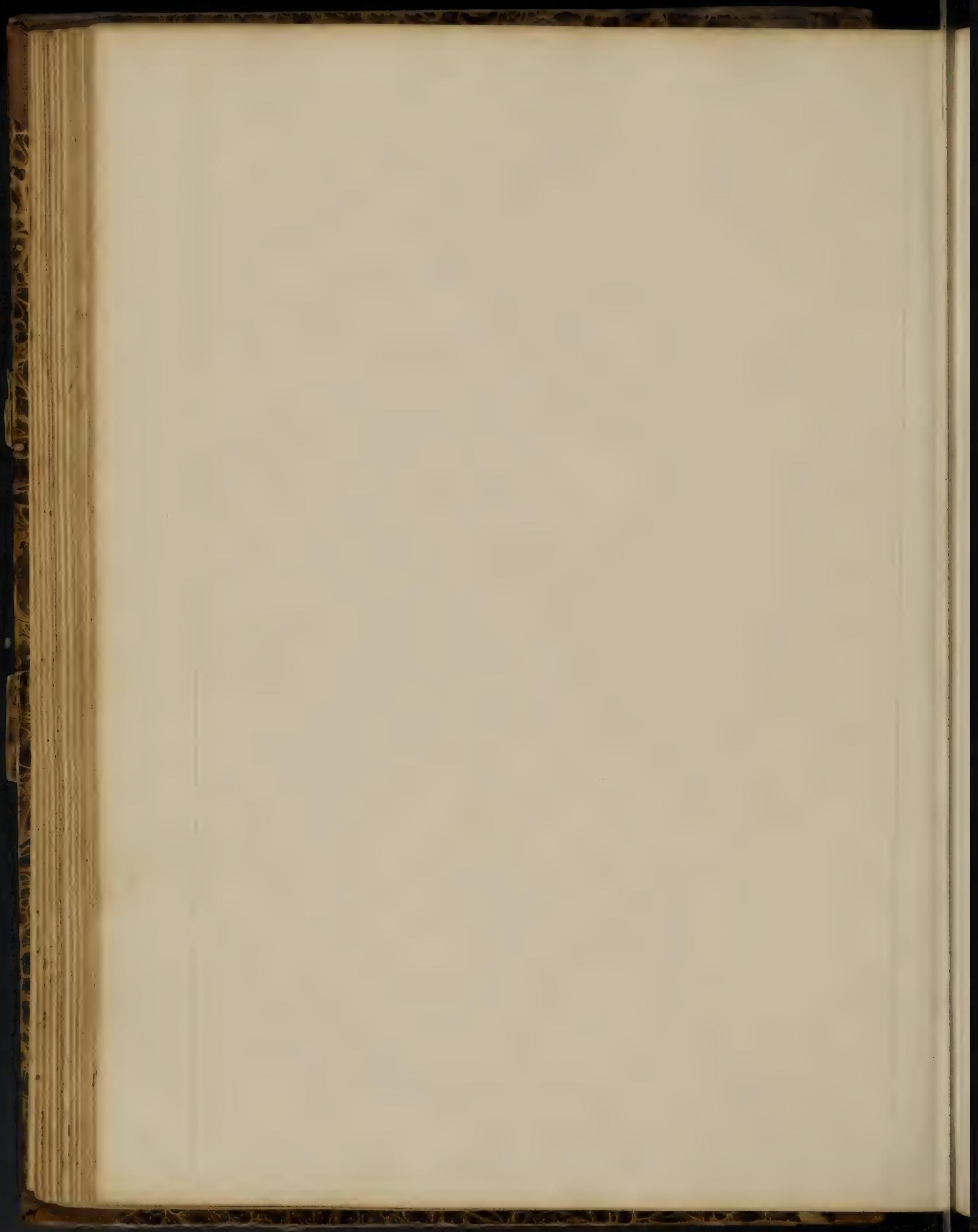
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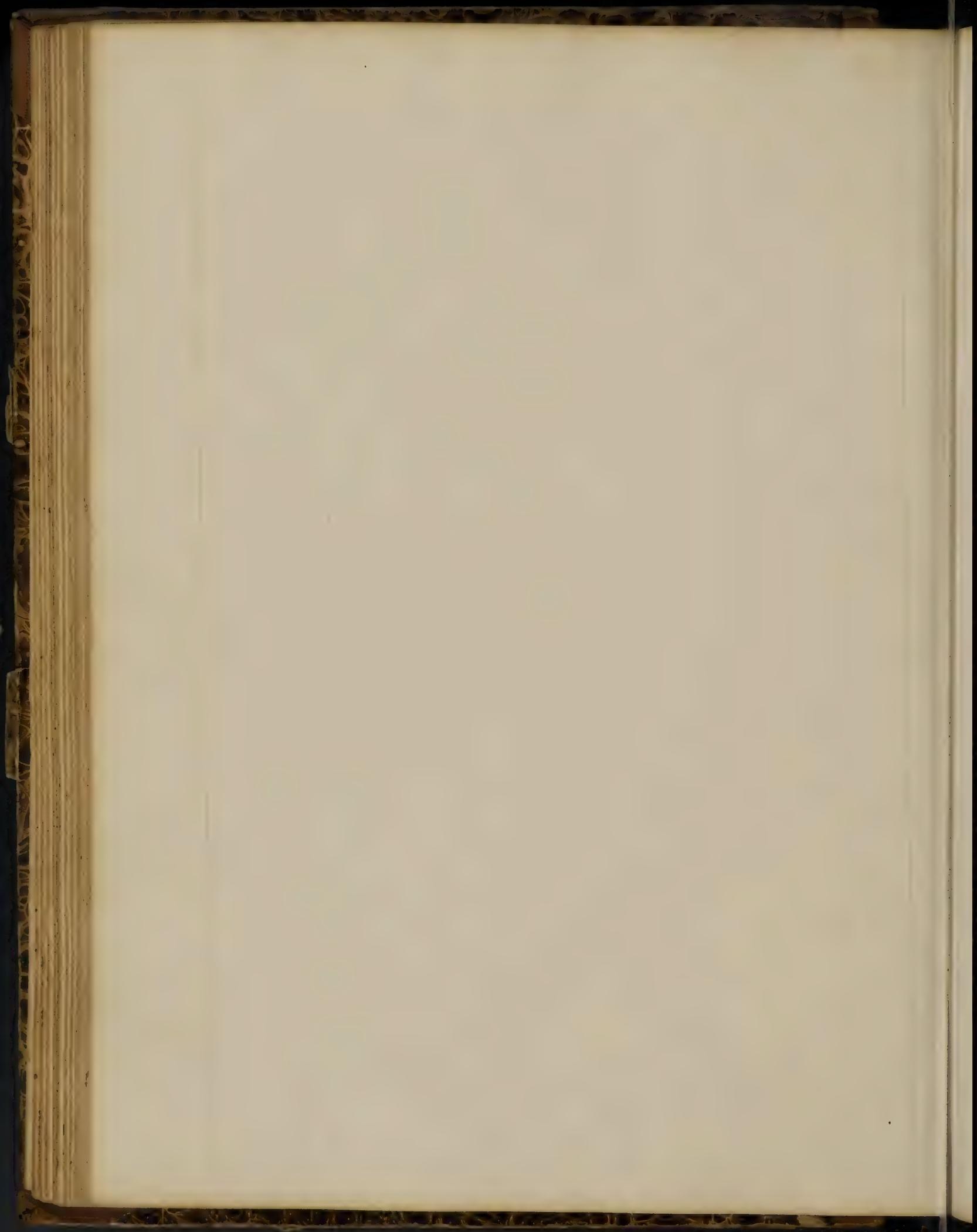
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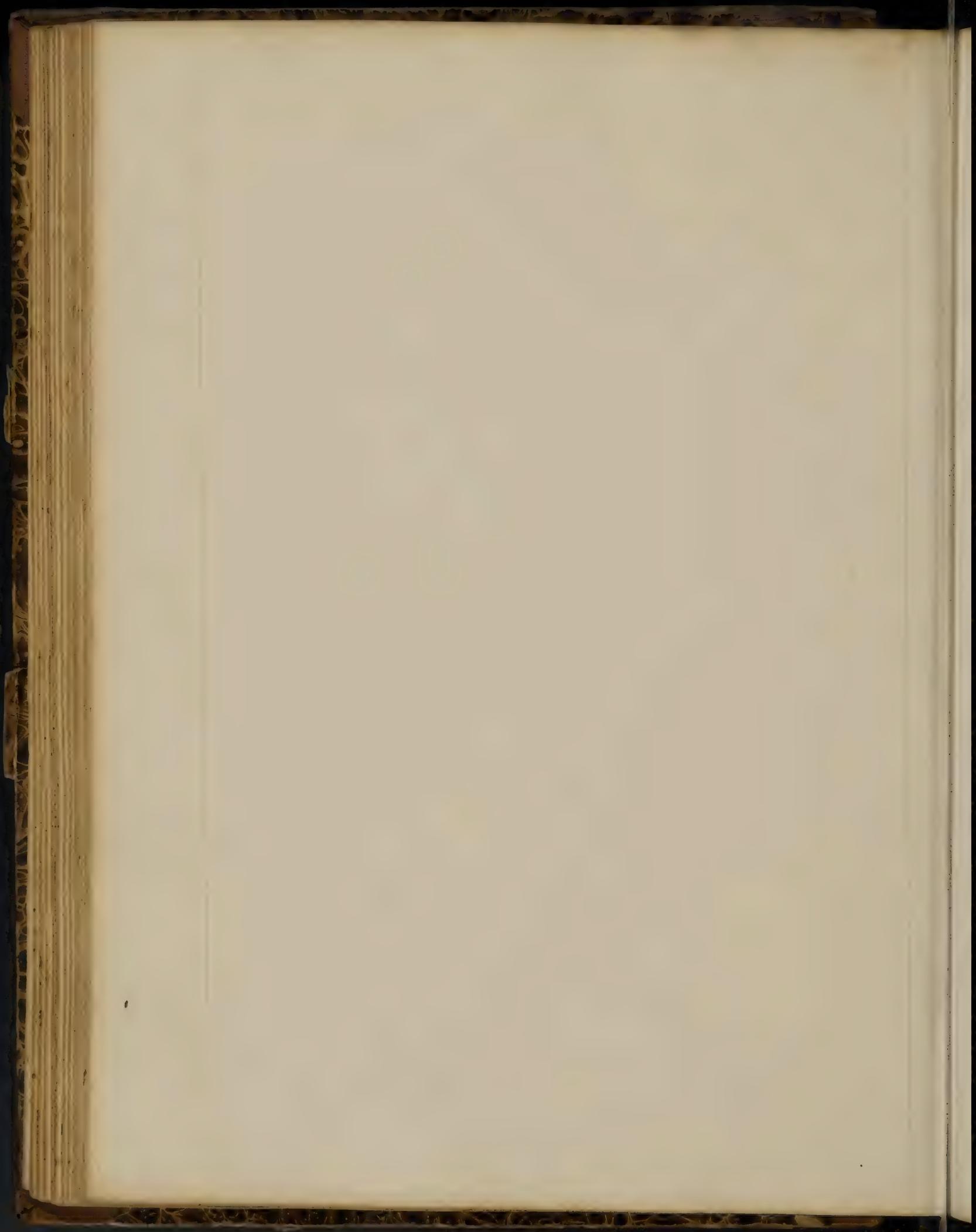
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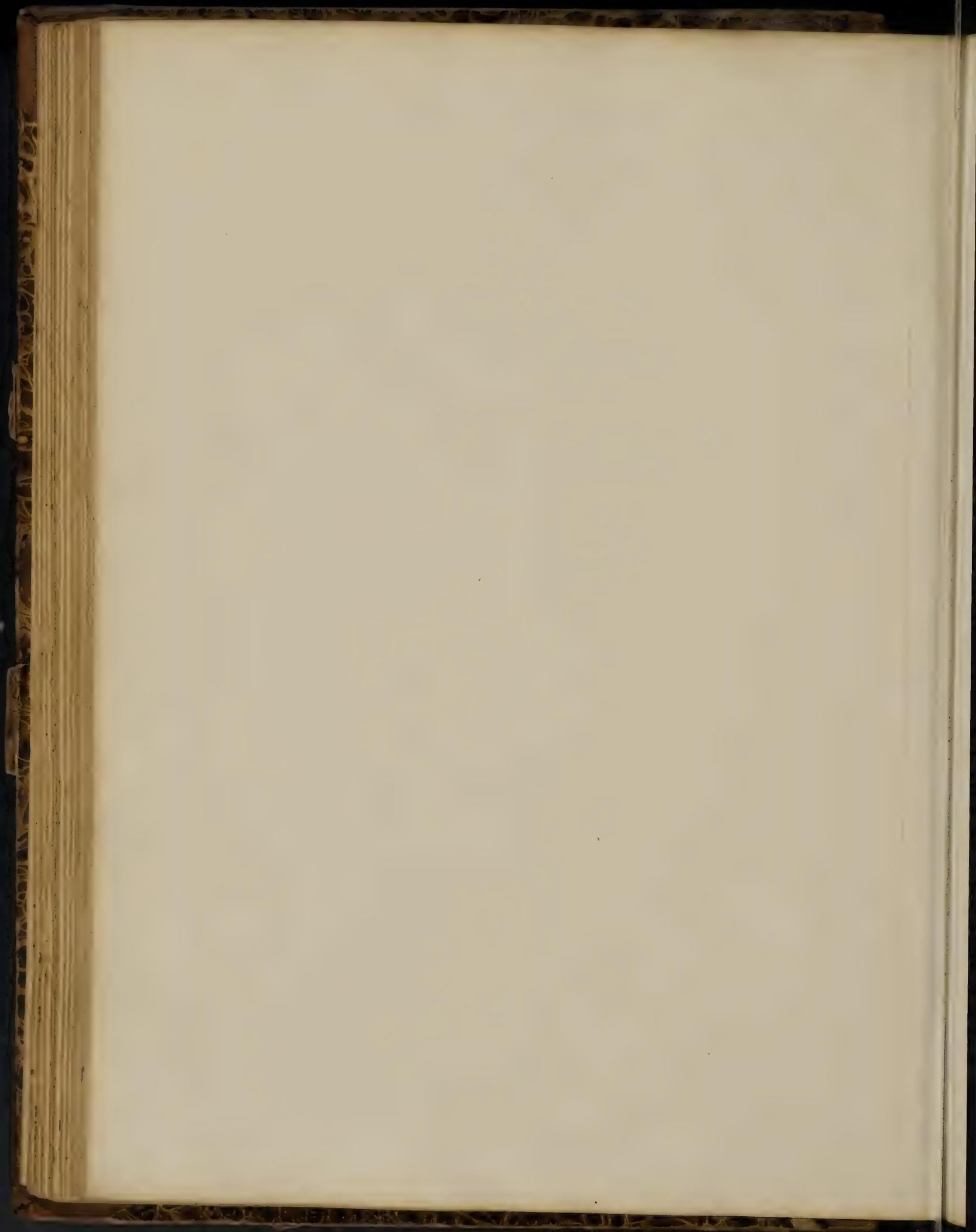
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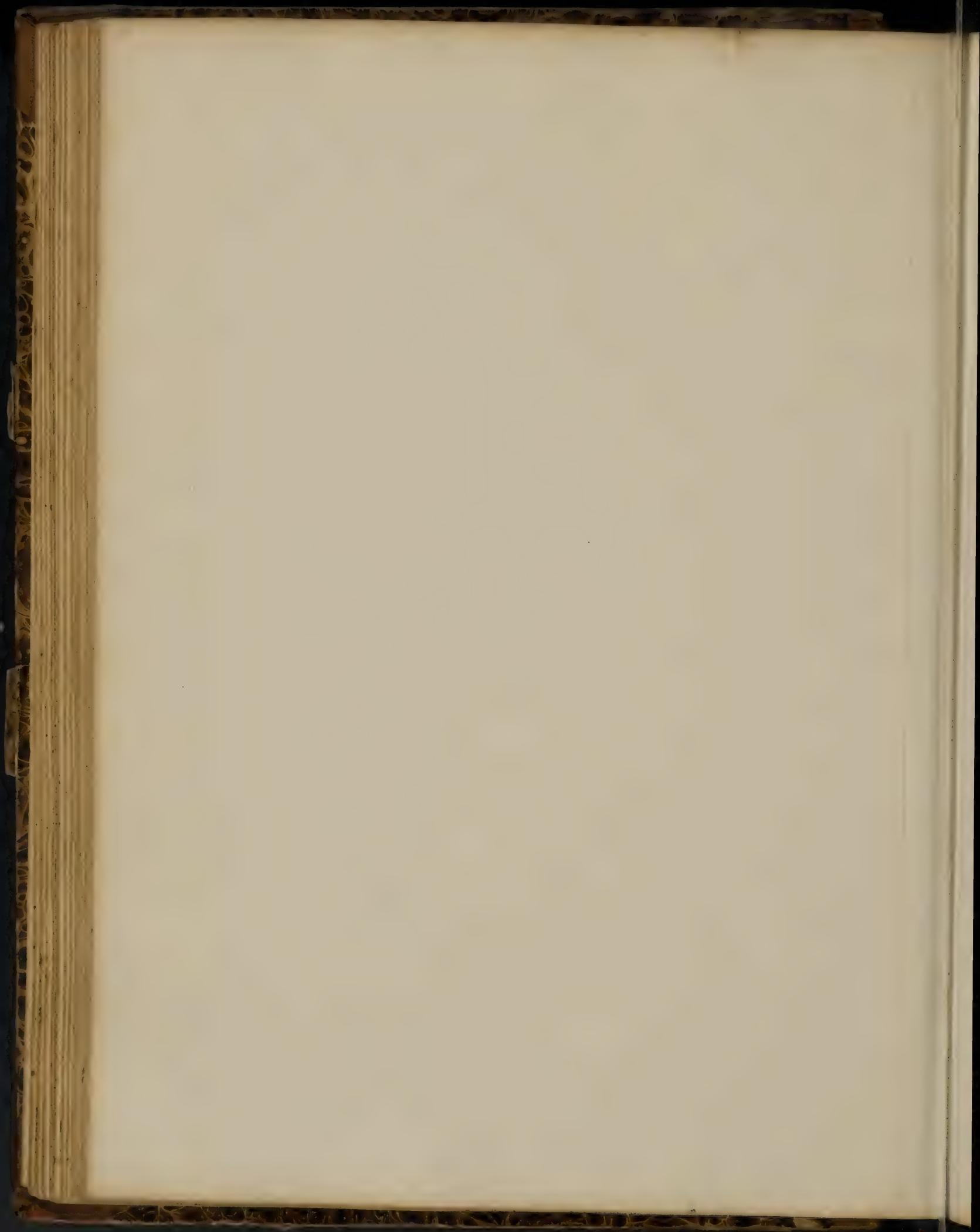
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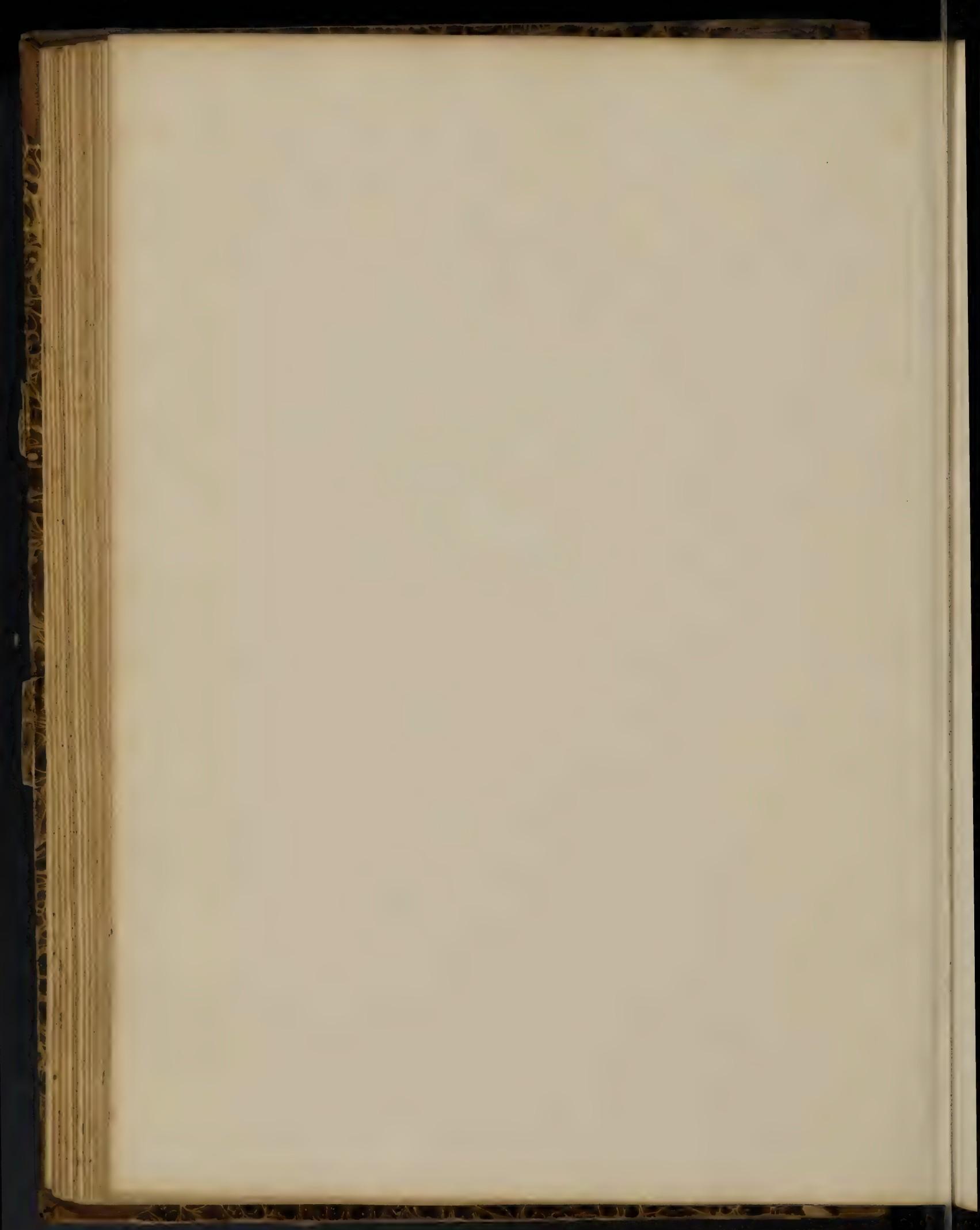
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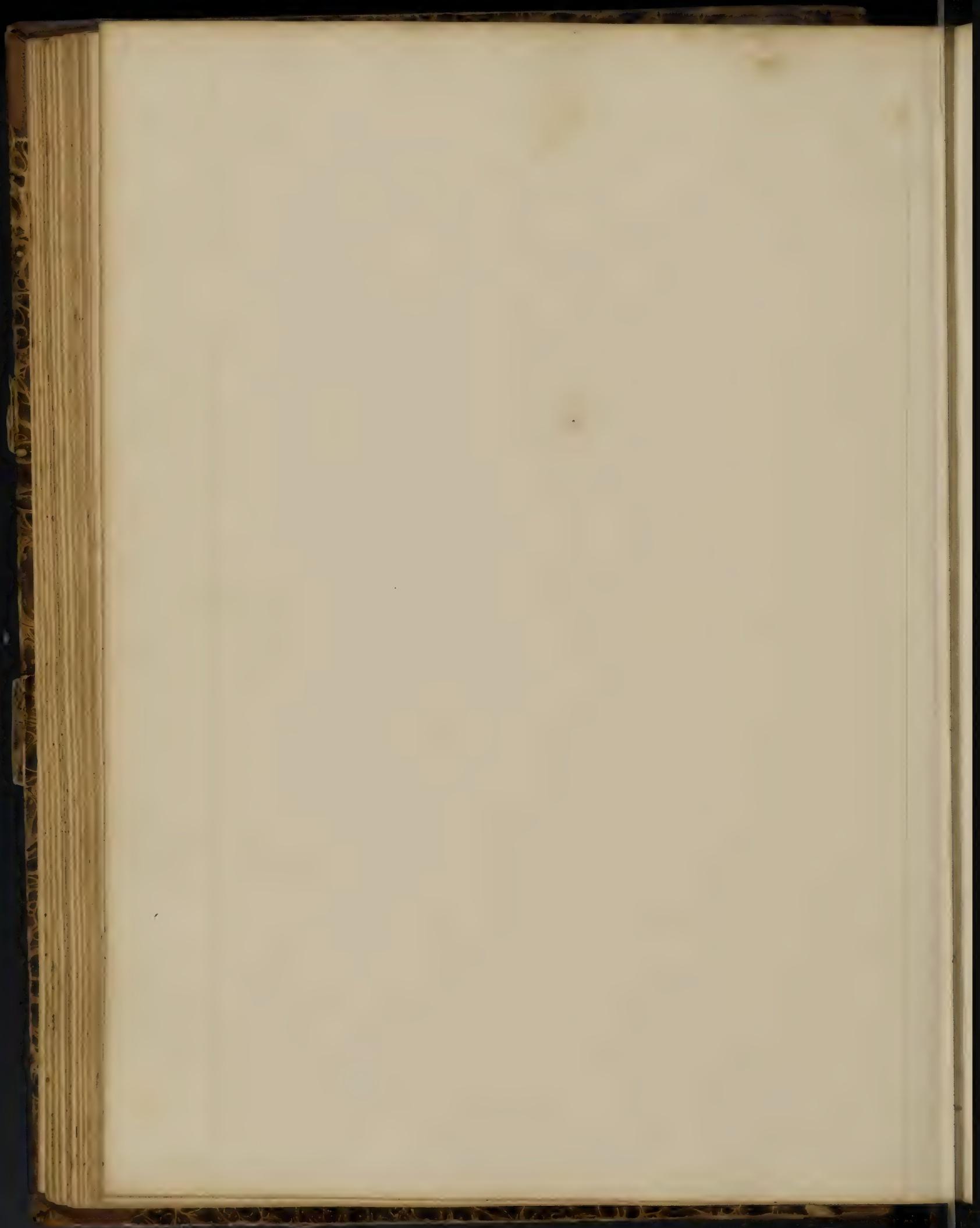
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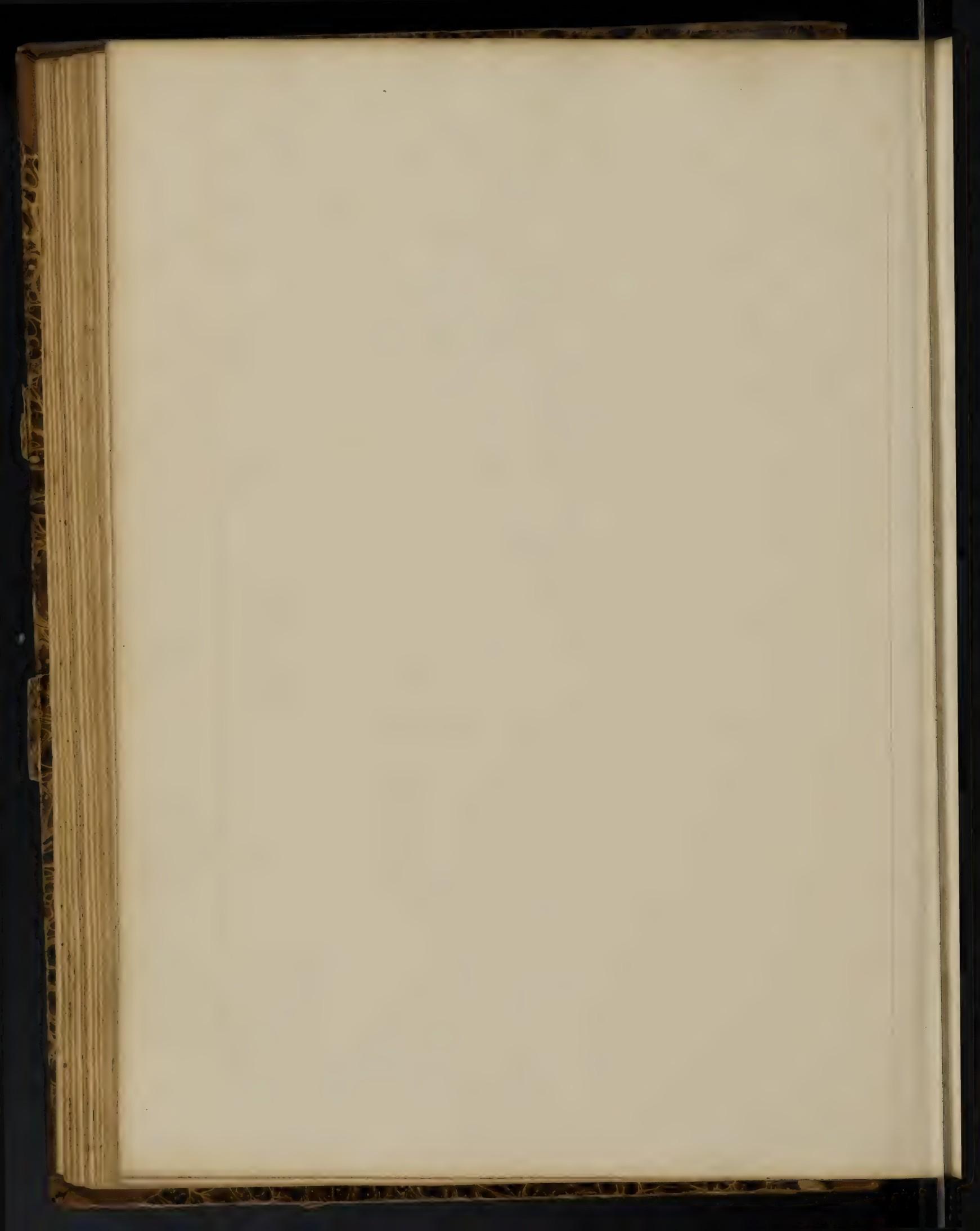
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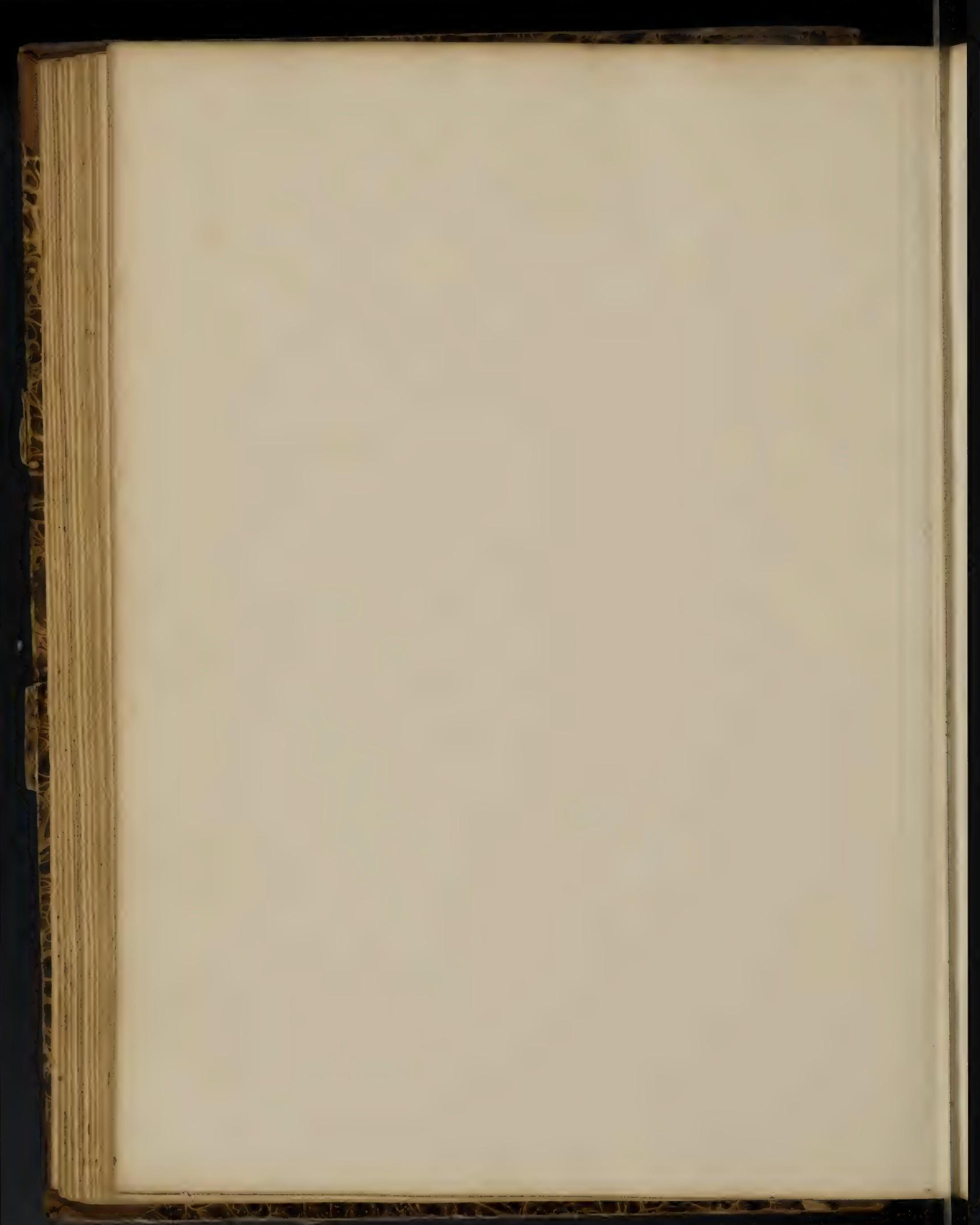
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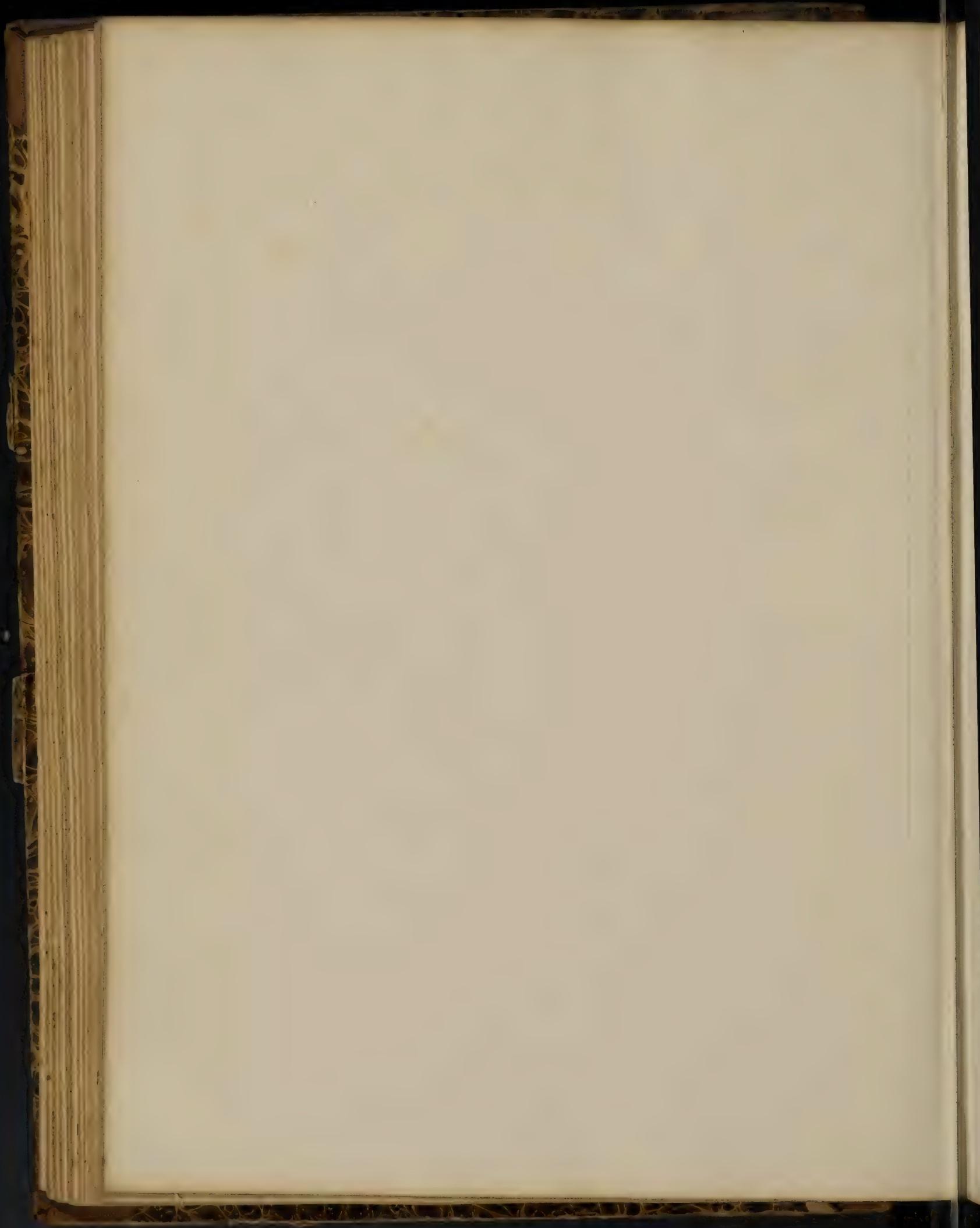
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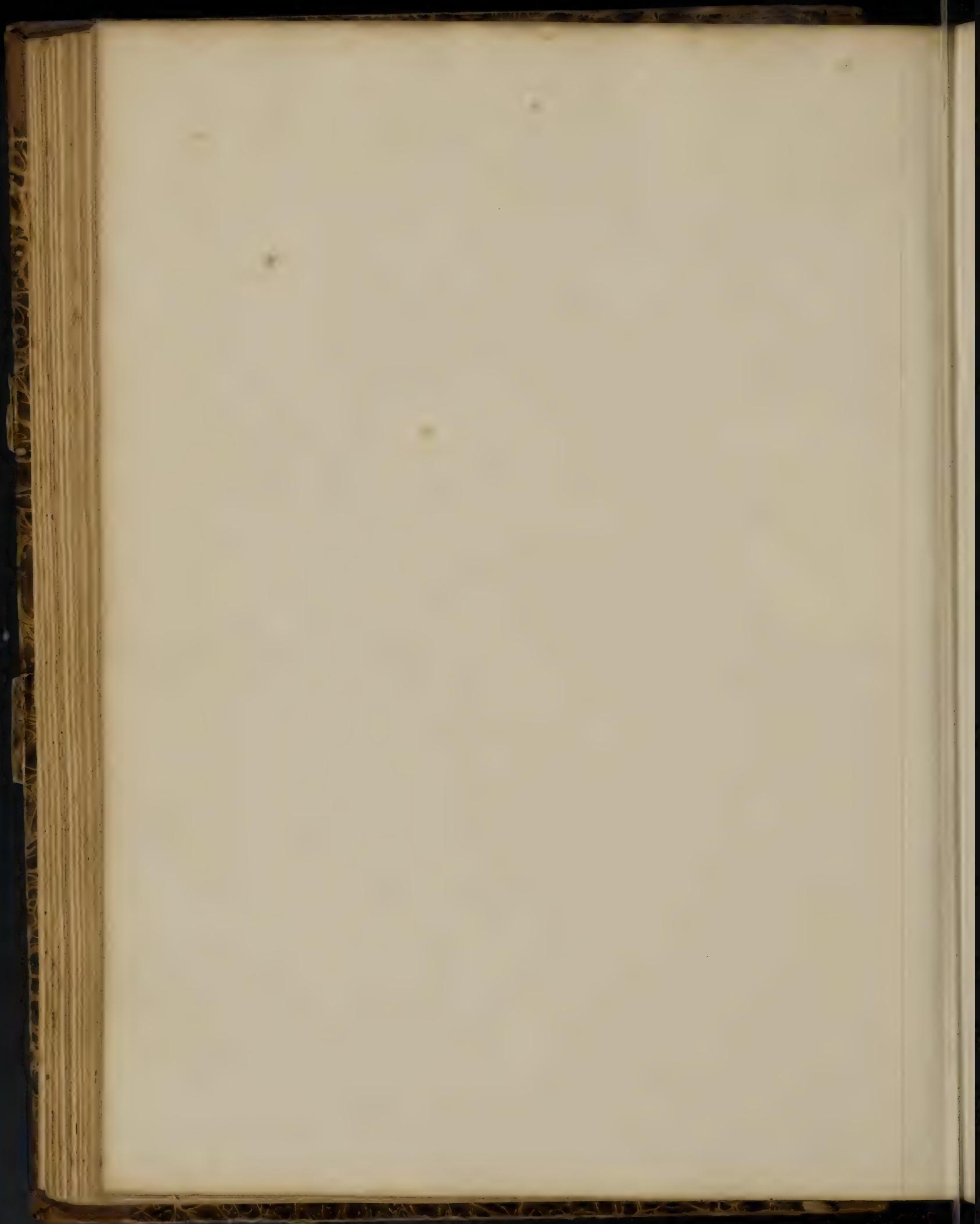
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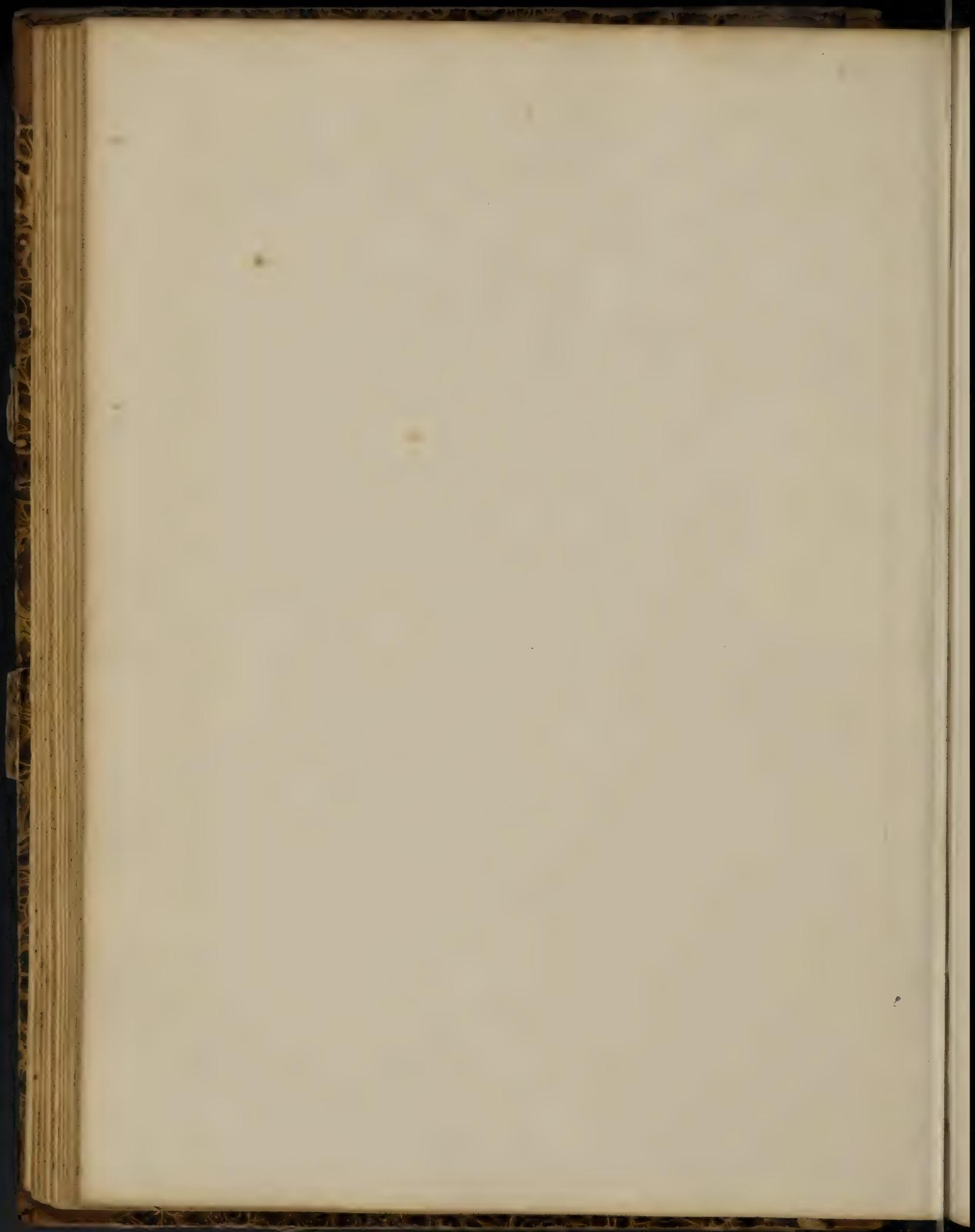
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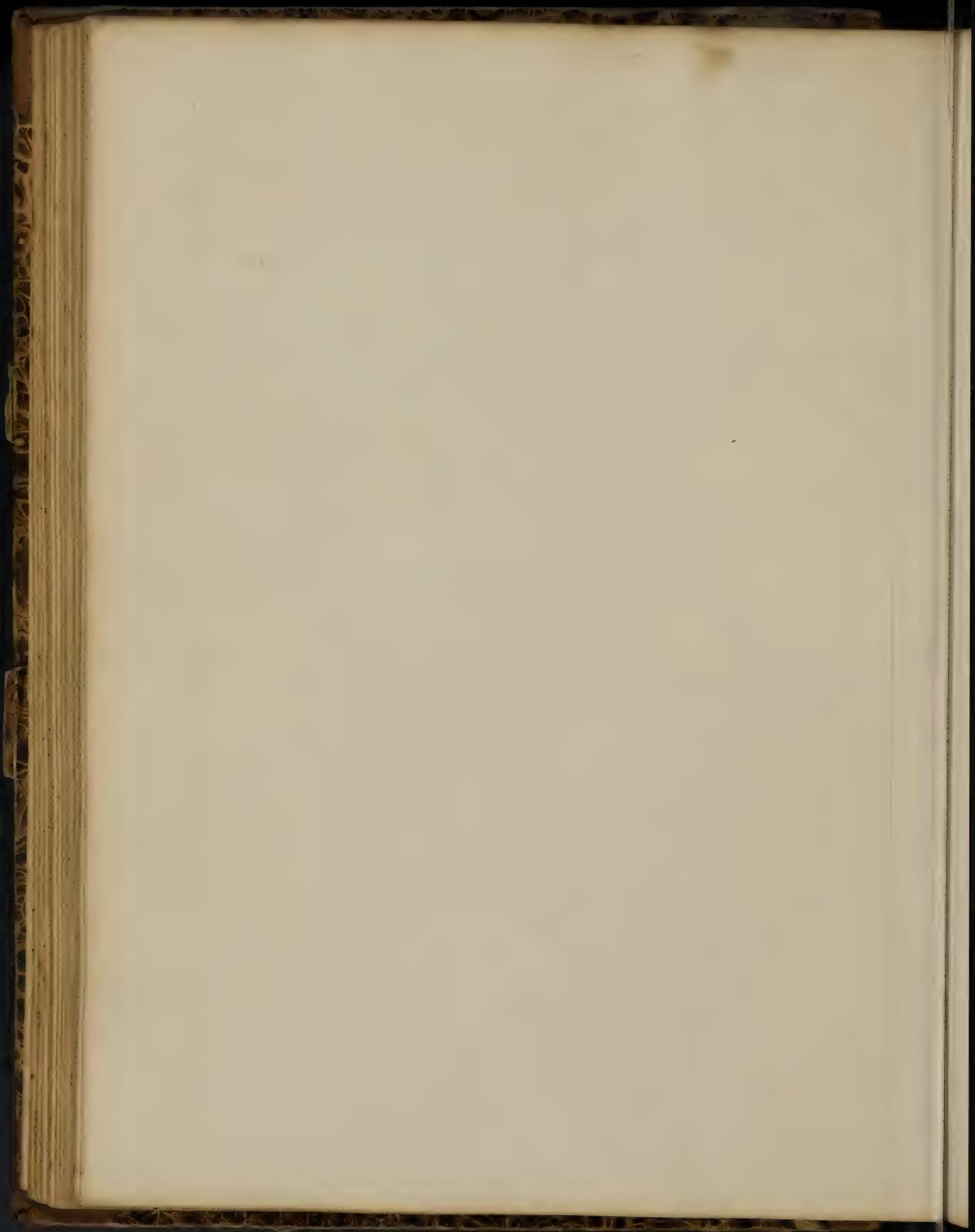
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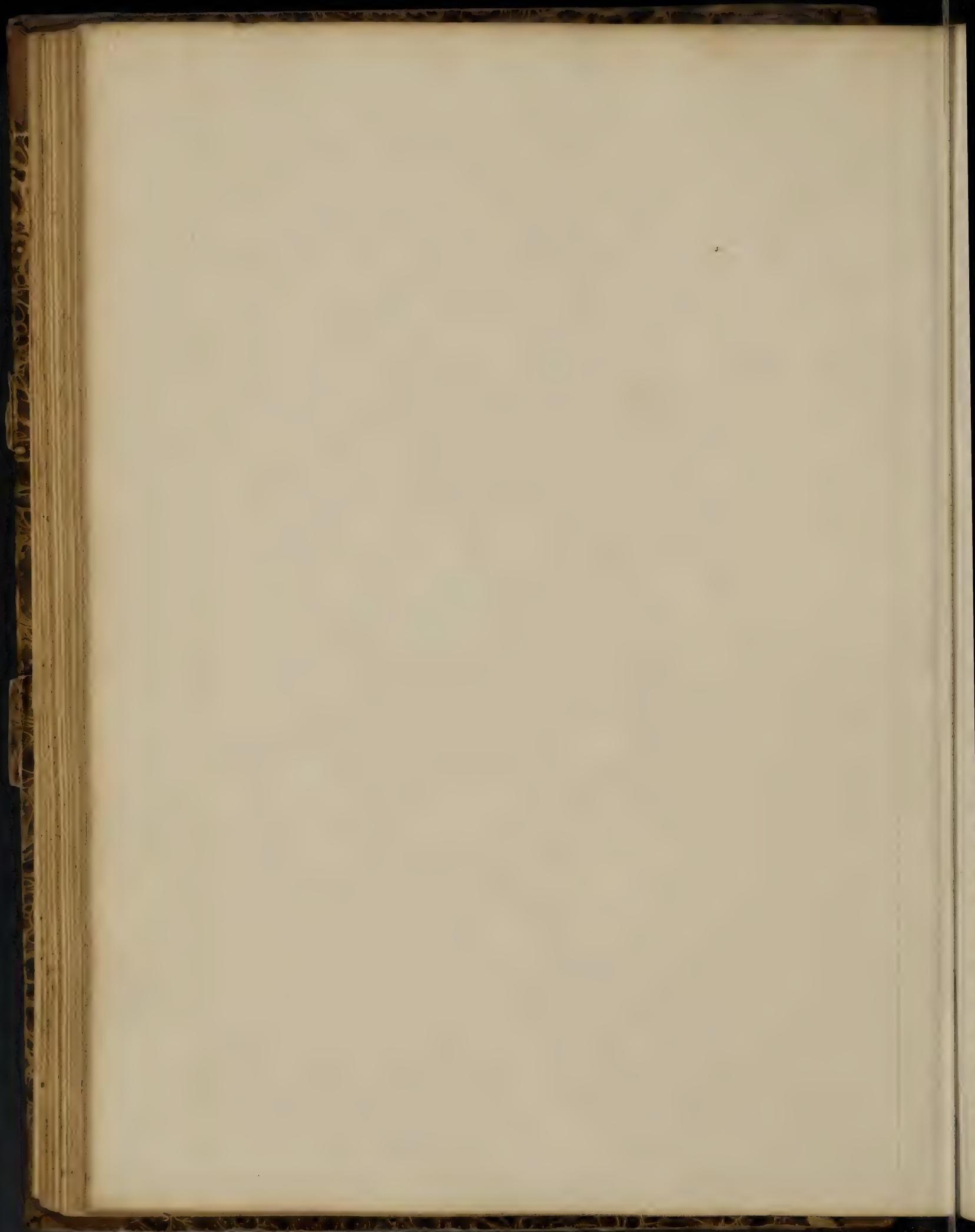
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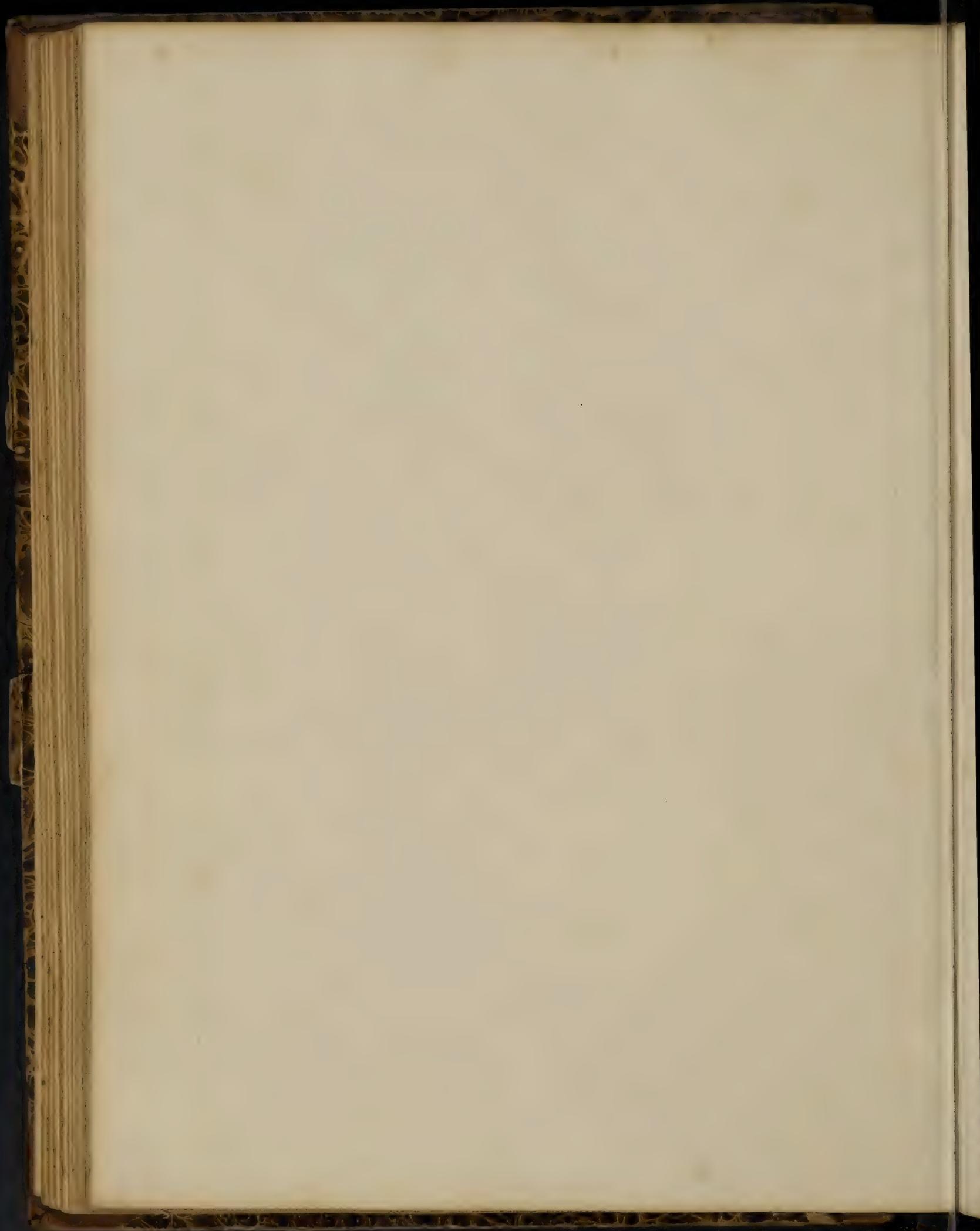
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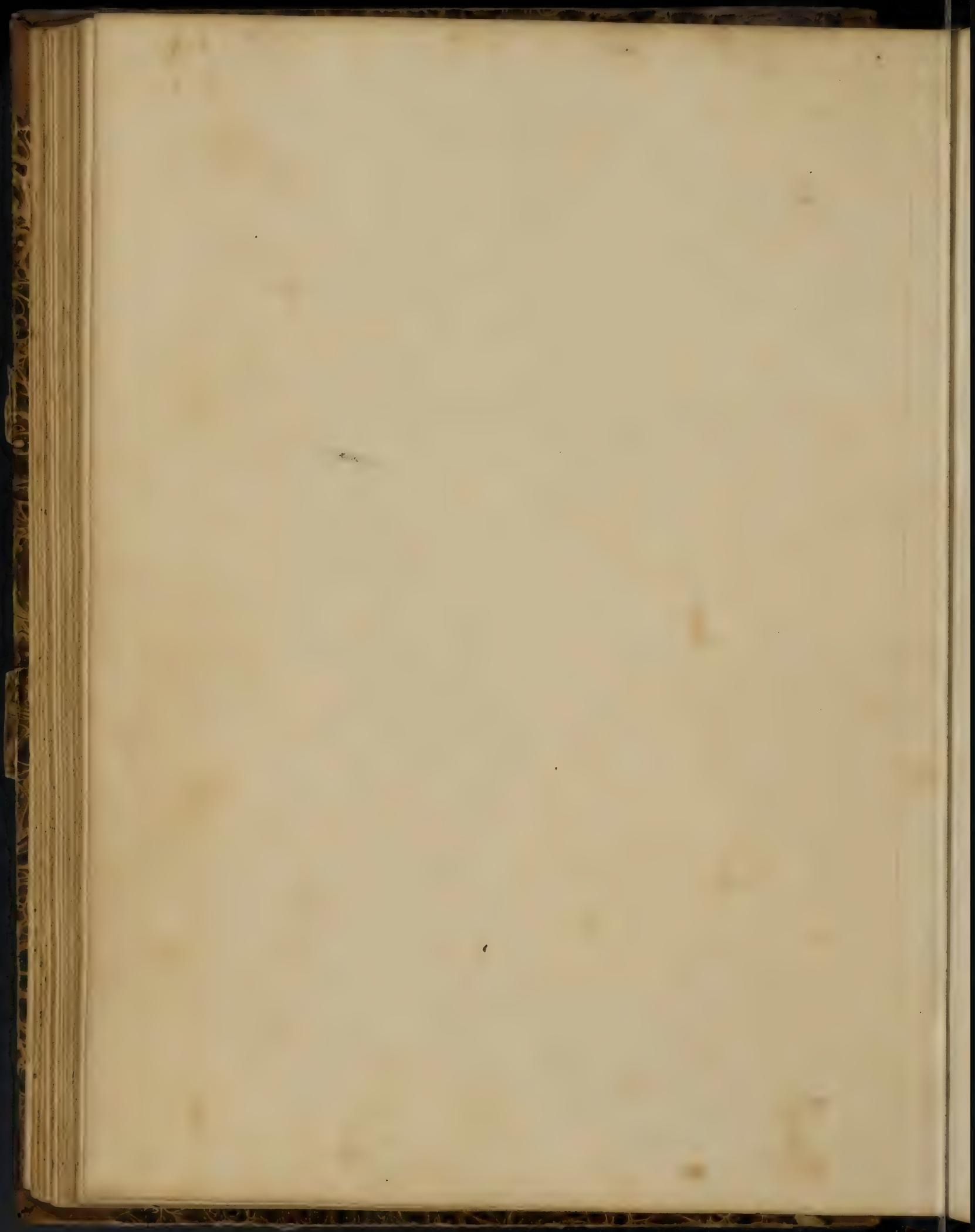
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(203)



Bills of Exchange &c.

The law merchant has been summarized as follows:

particular action but it is a well known
it is fully discharged if the bill is cashed so
not answer to be otherwise pursued.

In necessary however merchant wages 2 Bank
may be pressed by billness but they as 1222
to instruct the judge so they up consult 1B.R.290.
Johnson's distinction 1 B.R. 100, 45 R. 205
13 Bank 100, 223
223
caR. 100

Formerly the law merchant was confined to
merchants in case of bills of exchange
but now it is extended to particular
transactions among individuals of an
association.

By the law merchant term is meant that
unwritten code of law and custom merchantile
transactions.

A Bill of exchange is an open letter of
credit addressed by one to another
directing the latter to pay a sum of
money to him or to his order or to
bearer.

leg. 13. 7. 3
26. 4. 2
11. 3.

of bill of exchange may be drawn to
Bills of exchange are to be drawn at or to
3 Dec 1847 or to draw or to draw

1847

or 1847. 47

1847. 8

will be

1847. 6. 22. In usual negotiation and bill of exchange
for many purposes is only a segment to the payee it is
of 1835 page one from the drawer to the drawee, or
the drawer is always supposed to have
funds in the hands of the drawee & the
drawing of a bill is not an authority to the
drawer to pay to the payee.

This instrument differs from a common
draft or order in being negotiable.
In the latter instrument the word
order, bearer &c are omitted - P. 1847
1847. 6. 22. 1847. 8. 1847. 1847
1847. 1847. 1847. 1847. 1847

of negotiable instrument as one in
which the legal interest may be 1413602
assigned to a third person & thus 75R243
that person becomes a party and may ch. 4. 6. 7
 sue in his own name. 107.

45R342

53R683.

This negotiable quality does not Co. Litt 232/6
exist in bonds & documents - at co. the 26 and
rule relating to them instrument is ch 2:3. 100.
that a chose in action cannot be 2 Bl C 442
assigned. 131626. 62

The meaning of this rule is, that 45R341.
the legal interest in the debt created
a secured by the bond or cannot 2 Bl C 442
be transferred. The action b't ch 5:6. 108.
when it must be in the name of
the original creditor.

Hence the oral creditor at co 75R663
may release the debt after the ch 6
transfer of the bond & even after
notice to the debtor of the transfer.
The release is from the plf on the
record.

Of late Ct's have taken much h'ng John 241
to evide this rule especially in Eng. Joh R 531.
Country - In ct's if a release is pleaded John 42,
the officer may reply that the release
was given after assignment notice of
assignment to the officer. This is
in accordance to its principles harsh
& inconsistent -

and in Eng^t an attempt has been
made to destroy the effect of these
releases. the Co^r refused to allow the
release to be pleaded.

113447 In Eng^t no note may be given
in st^c as the notes bound to in
effect to the release. But by a late
stat^e May 1822 c 12th such release &c is available only
so far as it would be in equity¹ & if no notes are negotiable
& now they are negotiable and when
they exceed thirty five dollars.

City of Co^r have always supported
28442 assignments of causes in action and
10440 the assignment is for valuable consider-
450 575 ation in Co^r the debtor may be
211m 100 compelled to pay the debt to the
185 4412 assignee notwithstanding a release
Ch^t 1st made after notice of the account
10442

Ex^t It is now determined that the
assignee may have an action in the
case as the obligor for fraud in
accepting the release if the obligor
is unable to pay.

The contract of assignment, is now
 good at law as between the parties
 to the assignment to the intent Salk 113
 of giving the assignee an action &c. 2 Bl 442
 & t^o the assignor t^o he releases &c. 2 Bl 442
 and if the assignment is under seal Work 373
 it is construed to contain an int^ll^l Salk 133
 cor^l that the assignee shall have the Pwms 608
 benefit of the debt & may sue in
 the name of the assignor.

In the latter case the assignee has in ad Ray 683
 cor^l broken in the first in a sumt^l 1242

There is no necessity of a deed in 3 Ke 6 304
 making the assignmt^l valid. 4 J R 690
 4 Count 32

In my action for a bond given by me
to John East for a debt due from
John et al to me will be pleaded by me
that if I have his interest it must
be determined and its value taken
notice of it. But this is giving
a great man & has since been
questioned yet is breaking down the
division line between the two
jurisdictions, York & R. Rydles. Capital
plaint 209. & is no part to the
record.

Annotations

It is a rule in law in action, or simple contracts the deft must prove a considerat^y
hyl 47. 2 Ban 1639 1000 1671. 1 P. & C. 830. 2. R. 351.

Ch. 9. Now Bills of exchange &c are simple hyl 48
contracts & not in fact the deft need not 2 Bl 445
prove the considerat^y & then like deeds simple 2 Chay 758
a considerat^y in some cases & in all cases they 1 Bl R 457
prima facie implies a considerat^y 3 Bl 675
~~Contra dictum etiam in aliis~~

Ch. 9. 51 11

115.

2 Bl 147 395

when however the holder claiming the bill 3 Ban 1570
as bearer where the bill is transferable 1523.
by delivery under suspicious circumstances 2 Bl 220.
the deft must prove a considerat^y paid - 2 John 238
by himself or by some intermediate holder Ch. 9. 20
So the bearer or indorsee may be called upon to show that 209.
they gave value for the bill where the deft proves that he a former holder 433
holder took or was defrauded of the instrument to vide Ch. Bill Ed 1834. 100 k.

But when the holder is named in the 2 Ban 291
bill as payee or indorsee he is then no 408 & C 208.
bound to prove a considerat^y for the 10 Bl 140.
fact that he is named shows that he
gave value to the instrument sed vide
(Ch 51. 2 Camb 574. 1 Camb 100. &c.)

But an instrument intended to be a
note but not coming within the st of
Ch. 9 does not imply any considerat^y even
tho' it contains the words 'value recd'
& the same lies here on the P. &

5 J.R. 582. 3 Caines 286 2 John 237. 3. 7 John 321.
the words 'value recd' in such writing now
prima facie imply a considerat^y 3 John 484. Ch. Potom.

If on settling an ac^t for goods sold
Bank 819 one party gives a bill of exchange for
ch 62. the amt^t to the ac^t wh^{ch} is not
paid & the person giving the bill is
sued on the ac^t, not on the bill
the deft cannot dispute the ac^t.

1 R.R. 445. And in suit the deft on his
2 R. 71. part is not permitted to prove,
1 Stra 674 want of consid^w- unless between him &
Kyd 2767 & the party in immediate privity
Mawh 543 with him in any case -

2 Inst 2. This rule, is founded on the genl
ch. 15. principle that it w^t be a fraud for
Nollat 27. the bon^{fide} holder if he could
be defeated by want of consid^w
between prior parties -

But (it seems) that where the payee can^t recover
2 Bam^d 4. on account of want of consideration or illegality so that the bearer or
adolph 291. indorsee must (without notice to provit) prove that they gave value

2 Caines 246. But if the payee sues the drawer or
1 Espk 1194. the indorsee the his indorser the
Evans C.C. to the suit. - here is no ac^t arising
s 2. from showing want of consid^w.

But if one takes a bill after it has
become payable and from a party &
 is said to show that he was no
 consider for it or to show any other ch 52 is
 accountable defences of which the holder had 283:4
 was aware! This last qualification is 37 R 83.
 However does not goit too much — 75 R 428.

Because the holder takes it under 1 Will 230
 circumstances of suspicion - if it is 20 R 170
 left to you in such cases to presume
 on the slightest circumstance that
 the holder was aware of the equitable
 defences. — It can make no difference
 in this case whether the bill was
 transferred by delivery or by indorse-
 ment.

Justice Buller says that a holder who 75 R 428
 receives a bill under these circumstances 1 Will 282:3
 he is liable, of course to an equitable ch 114
 defence which exists between the two 37 R 83
 parties. I like the rule it is
 much more simple & fair, dispute.

Bills are of two kinds foreign &
inland. Kyd 10.

A bill drawn in one of these states
payable in another state is a foreign
bill contra 5 John 375. — circuit Ct
of US Consolade v Brown. Penn 1821.
3 Kent C-

Banker checks are bills of exchange
payable to bearer usual, but here
sometimes to order. ch 16 17 171 109.
7 R 423. These are of course then
negotiable formerly thought otherwise
3 Burn 1517, ch 16 1701

Such checks are will pay ab's on
demand. of course they are not payable
on des until demand made & if they
are not presented in reasonable time
the drawer bears the loss. 7 R 423.
ch 16 44: 5 Kyd 41: 2 186 R. Ed Raym 744.

Such checks may be declared as
as bills of exchange. but it is said
they are not liable to a protest,
if the check is a foreign one I
cannot see why a protest w^t not
be proper. 3 Burn 1517. 1579. 7 R 423.
3 John 6: 5.

such checks in mercantile usage are treated as cash - yet this would not be treated as choses in action.

J.R. 42. L. 6. 1855 Edin. 744 v. H. 171

What is a reasonable time?

This was formerly considered as a mere question of fact to be determined by the jury in each case, but they, who found for the claimants, - now in the first instance it is a mixed question, the jury must find the distance B.R. & the convenience, for convenience &c. & that 417. 550 the fact being ascertained, the question is a question of law. the 1175
1st direct the jury, that if they 418
find the fact to be & that they 419
must find that the check was presented
in reasonable time ready, ready

Parties

the persons in genl having capacity
to contract may be parties to a bill
of exchange Chth 283. Ch 19. Com 152.
Stat 292. 1 Stat 118. 72. 2d ed 36. 360.

104th 11 of copr may by its agent become
28th 121 party to a bill of exchange but in
no other way - of copr itself can
do nothing but pay a note -

If a bill is drawn, accepted or
indorsed by a person incapable of
binding himself it will still be
binding on the other parties. &
one who draws a bill the indorser
is liable to draw a new bill on
the drawee 28th 162 ch 17

any person may become drawer or acceptor by his agent as well as by his own act. Nello 50
12 M. 34 C. 564. Q. 75, 6th London 430.

In such case the party is said to become party by ~~procuration~~, ch 24. An individual may act as agent for this purpose since it is a ministerial act. ^{in fact} Curat 12. 2. 52. ch 24.

An agent may be constituted for this purpose, ~~with power of atty.~~

On the other hand an agent cannot execute a deed for another without a consent by deed. For a man cannot touch himself except by deed.

An agent acting under a genl authority may bind his principal to any extent but a special agent can bind the principal only to the extent of the special authority. 3 & R 352. 1 & 3 C 155
2 & 4 R 618. 6 & R 591. 1 Esp R 11.

On mercantile usage a person signs
his name on blank paper and delivering
it to another authorizes the latter to
sign for him and to fill it up with a bill to an agent
. 4 R.C. 313.

Art 110 But this does not apply to deeds
Ch 25. 56 deed takes effect as delivered, besides
there is only an implied authority.
sheff 3 54 Park 811 4 cruise D 26.

The agent shall always act in the name
of his principal if he executes in my
own name he alone will be bound.
It's best his ally is the best mode
strangers C.R. 76, Consulary ally C. 14, 13 R. 111
will be the best way to bind the principal.

talk 115. One of the first things may be accepting
7 R. 107 a bill in the name of the firm and
holding 314 the firm provided it is given to
Ch 27. 8 receive a joint debt &c.

M. 100 He acts as agent.

Reake R. 16

Bac 66

Merch. C

talk 115. It is so that the act of one tho' in
the name of the firm will not
bind the firm if the bill is given
for the benefit of the one drawing.

If one - the partner, contracts a debt
probably on his own acc't to secure
it from a bill in the name of the
firm. If the party who does know that
the bill was given for the separate
acc't of one of them, he cannot recover
of the firm, but otherwise he may
recover. Stern 277. 142. Esp 8 524. 8th & 18c
ch 28.

But of late it has been held, that if (Camp 314)
a bill is drawn on a firm and accepted (Camp 308)
by one in his own sole name or in 15 East 112
the sole name of the other partner,
the firm is bound. — The acceptance
is held to follow the nature of the
bill, & to be construed by it.
!

Again it is held that the persons by
Mits 253 making a bill payable to their own
Long 653 order make themselves quaas hoo
Peake & C partners so that they may induce
ch 29. own the bill - no one

A bill drawn on a corporation may
be accepted by their agent only ch 52
ch 29.

Bill of Exchange (1821)

Collateral instruments are construed with great liberality. eis non s' nō s' necessary. common law 612. Cr. 81
3 Will 2d. Ryde & Tra. 2d. Sept. 2d
Bac 2d. 1821. ad Raym 1346. Tello d 3d.

Certain writings are considered collateral
and it is not an instrument but mere
evidence of a parol contract. ad Ray 1545

The word instrument has an appropriate ~~wide~~ 353
signification & means a writing which
of itself constitutes a ground of action
or defence & is counted upon as such
in pleading. but a writing not an
instrument is merely evidence of something
else & is never counted upon or pleaded

at Bill of Exchange a promissory note 3 Will 2d
having the requisites of an instrument 2 B.R. 1072
& may be counted on but without 52 R 485
the requisites it carries with it no 70 R 241.
evidence of consider & is not negotiable 104 P. 239
& is not a bill of exchange (or thus 242
last point however vice post) according
to the weight of authority such writing 70 R 243
may be declared on as a bill as a 52 R 415
bill if exchanged as between the original 1d 33 41
parties 1d 33 41 & 1d 33 41 contra 1d 33 41
+ ch. Bill. Edn 1835 page 5 contra, 1d 33 41
3 Will 2d. 2 B.R. 1072. Bayley's. contra! 1d 33 41
3 Will 2d. 2 B.R. 1072. Bayley's. contra! 1d 33 41

These requisites are two. 1st that
the bill be payable at all events
& not on contingency.

3 Will 211 2nd that it be payable in money
2 Rich 202 only

5 R 415.

7 R 241.

14/136 239.

Ch 32

Hyd 50

If then the bill is payable on an
event which may never happen it is
3 Will 217 no bill of exchange.

1 Barn 325

Sta 115.

Hyd 56.

Ch 32:3

if it is payable out of a particular
fund which may or may not ever be
produced & the bill must import
credit to the drawer & not credit
to a particular fund. So Ray 1362
1396. 1563. Sta 1151. 7 R 242. 5 C R 412
4 R 343. 13 C R 712. Hyd 512. 3 Will 207

When the event or who the bill is
payable is, ~~is not~~, morally certain
& one who concerns trade the bill is,
a good bill & exchanged by a bill strategy
payable one month after a ship is 11 May 162
paid off. - - - -
Balk 272
Kyd 57.

But again if the event is one which
must necessarily happen at some future
time the bill may be good enough. Bnk 220
Ex at the death of A. or when str 120
is attained a certain age namely the Kyd 57
time when this age will arrive on March 35 &
the bill will be payable the 12th day
of the month.

The mention of a fund in a bill does not charge
silence & unless the payment is dependent on Raym 148
on the fluctuation of the fund Ex in a long
as means to draw the money out of a high
fund to imminent loss - in short the men-
tion of the fund does not silence
of the bill distinctly a sum due to
the drawer & not a credit to a particular
fund -

6 Aug 1845
J. C. 723

2^d payable in money only by & ch 34
for these bills are devised to facilitate
remittances - it may ch 35

one sup^t it is well determined that a
bill payable in ch 1 in current bank
bills of that city or a bill of
exchange - I b^t think the determination
right! bank notes at par are cash
to almost every purpose. 9 John 120.
4 ellab 245.

it will be wanting either of these
requisites may be used as evidence
of a contract between the original
parties tho' it is not a bill of
exchange. 2 B&K 1072. nyt 58. 45.

ch 46. Bailey 15. in the case of foreign bills it is usual
to draw three to prevent the consequences
of loss - but here to prevent the chances
paying each of them they each count
up to the others - in second & third
of the same tenor & date being unpaid

The bill must point out some person
to whom it is to be paid or to beanch'd
It has been said that if no payee 14B. 6. 45
is mentioned & not payable to bearer & there
& the bill mentions from whom the
value is rec'd it is payable to that
person from whom the value is rec'd
(vide ch 82 clts 2 vol 90.) vide 5 Com. 529 t. 1. 82/1.

A Bill payable to a fictitious payee or order
is as payable to bearer agt all who
knew that the payee was fictitious at Com. 293. 4.
the time when they became parties 33 R. 174
but unless they knew it the bill agt 14. 4. 81
them is of no effect for they might 14 B. 313
be defrauded they might have taken it 564
& indorsed it on the credit of the 2 D. 194. 288
fictitious payee ch 47. 8.
59. 61. 209
202.

Such bills are however strongly condemned - 14. 4. 81
1 Camb 130

Set in & a note which must contain
specifying who or what is to be a
holder or to whom it is given, who is
entitled to it by order of the 20.
trustee 202. 203. 204. 205. 206.
207. — Cost or expense to the order
of 20 or the name money in effect
in 203. Ch 15. 204. 207. East 470 hyd. 20.
Held in trust.

Bill of exchange notes usually contain
the indorsement but however
are unexecuted. A consideration implied
with them, the Raym. 400. Selloe 207
indicates 202. 203. Ch 20. Held in
trust.

18920. When a bill is for accommodation &
Rake & Co that fact is known to the indorse
or maker at the time when he takes it he
can recover no more than he paid
Ch 57. for it for the party and is not a
holder.

This rule does not hold where
18920 a bill is drawn or accepted for
a debt due. the debt owing the
whole debt & there can be no
right of recovery in making him
pay the whole.

When a bill is drawn for a debt actually due the debt must be paid to the assignee & the assignee is entitled of course to the whole of the debt.

Illegal considerations

In the case in which the debt can over the want of considerate may, 1 Bl R 445 of course over the illegality of the ch 52 consider as between parties in Long 614 immediate priority - & where a bill 636 is taken when overdue. & of first by 280 payable as drawee or acceptor.

And a subject holder who knew the 6 C 61 illegality of the consider at the time Esp R 166 of taking the bill cannot recover. 24 B 52.

But in case an bona fide holder
having no notice of the illegality
may recover on it. hyd Long 64
or 636. 13R 800. 300. 8CR 31R 390. 454. 537
72R 607. Stra 1155

Long 646 But when Statute law has declared
or 670. a bill to be void it is said there
2 1136 647 is an exception to the above gen'l
stra 1155 rule. but this is wrong - the
647 356 exception is thus where stat law
12ast 92 has declared a bill to be void for
183ph 274 the protection of one the parties
no holder can recover agt him,
Ex none can recover agt the party
giving usurious interest. So money
unlawfully won at gaming none can
recover agt the loser (the drawer)
no of course agt the acceptor for
the acceptor pays the drawer money
for to receive in these cases will
destroy the effect of the Statute.

And in the latter case the bona fide
holder may recover agt any party trustee
for whose protection the Stat was 20 Ch 16
not intended. & an indorse may 2 Pk 22.
recover agt the insurer if he has talk 344.
indorsed on the bill. — tolled 175.
yellow 1.
Girard 224.

Suppose the indorse had notice of the
wrong, still he can recover agt the
wronger —

If the orig bill is good still the person 2 Pk 22
indorsing it over is bound by the indorse & day after
it may be a new contract.

Thus the holder can recover agt
any party from whom he himself gets
it but he cannot advert to the
doctrine.

If a bill which is good in its creation, 1 East 92
indorsed over on bad reasons consider Ch 53:4
a bona fide holder may recover agt 16 Esp L 173
the drawer or acceptor tho not agt 13 R 395
the wronger. — The wronger indorser can
not recover agt any one — 3d 103.
2 Court R 7.
Loyd's Tech 3.

In genl the contract is construed
according to the law in the place
where the contract was made

2 Inst 733. 1 Bl & P 141. 2 4 Bl 603 Comp 174
13m 1071. 13 R 242. 1 East 453.

There is however an exception to this
ch 59. you are with regard to the time of
Plains 251 payment that is generally construed
Kyd 8. by the law of the place where the bill
is payable for tho the nature &
extent of the contract are properly
construed in reference to the place
where the contract is made yet the
time & manner of performance are
properly determined by the law of
the place where it is to be performed

31
70 R 247 Nature construction & legal effect are
1 East 6516 determined by the lex loci contracting
stranchigs. the mode of enforcing the right. such
302. as the process. the form of the action.
259 R 164 the mode of pleading is also determined
1 Bl & D 138. by the lex fori.

2 John 198. -

11 John 194

31 Conn 525.

Where a person receives a bill on account of a former debt for which he has no higher security he cannot in general sue for the original debt before the bill has become payable - for by receiving a bill payable in future he tacitly agrees to prolong the credit. 12 Edw 5 & 1 Ch 62. 167 R 52. 7 & 8 R 64. 18 & 19 R 5. 106. 5 & 6 R 513. Talk 442.

If a bill is altered while in the hands of any holder, with the drawer's consent the drawer is discharged even in favour of a bona fide holder - the alteration must be material as in date sum &c. Ch Bill 100 of 1835

4 & R 320. 5 & R 367. 2 & 4 & R 141. ch 62. 3.

It is the policy of the law merchant to protect bona fide holders but it cannot carry this policy so far as to make a forged instrument good.

Neither can a recovery be had agt the acceptor nor agt any one who endorsed it before the alteration.

But if accepted after alteration a recovery may be had agt the acceptor & trustee. (Beauch p 194. ch 63.) by a bona fide holder -

But the party making the alteration
need not care in no case recover.

If the alteration be the unauthorised act of a stranger
does it vitiate the bill? Scob not Ch B 100 q & note. 5 Pauper 707
year 555. & 1 B & B 430. 2 B & ad 757. 10 Com. R 192.

The drawer in the act of drawing
and giving out the bill comes
under an implied engagement that
the drawee is capable of accepting
the bill & that if a place is
named that the acceptor may
then be bound that the acceptor
will accept the bill according
to the law when presented
& signifies that on the presentation
of the bill the drawee will pay
the bill - Davy 53. 2 & B 6 578.
1 Esp R 711. tra 1017. Ch 63:4 70:2 Kyd 109.

The same implied undertaking is
entered into in each indorsement
by indorsee & to every subsequent
holder. 3 East 481. Bellap 559.
4 John 144 -

to such engagement is implied
where the party or receiver expressly
agrees to assume all risks - 1 B

Batif the holder transfers a bill for 100
a debt which is due from him & does not pay
not endorse it & the bill is not paid,
paid, the seller of the bill is still
liable for the orig'l debt. Kyd 90:1

¶ And in case of transfer of a bill for a previous debt without indorsement, it seems, the person transferring may be liable for the debt where the bill is not paid, the person receiving the bill does not pay it, & if payment gives notice of dishonor if the person transferring offers to pay it. This is an arrangement of Ch 123:4
indorsee is also so liable but if 109
there is no indorsement, caveat emptor applies —

* When there is a failure in any
of these implied undertakings the
drawer to immediately become liable
even tho' the day of payment has
not arrived. Long 55. 3 Phil 1687.

1 Burr 66q. Ball 26q. 1 g. K 52. 13g. 3 Wies 10.7
3 East 481. 3 Ella's 551. 4 John 144.

In some cases it is necessary & in most cases
expedient for the holder to present the bill
for acceptance.

Kipp 117 when the bill is payable within a limited
Ch 67. 202 time after sight or request presentation is
14 Bls 5 of course necessary & if payable on sight
in one of the days of grace
Ch 712 that is to say it is ~~necessary~~ to
Ch 167. present the bill for acceptance
Ch 208.

Ch 67. and when it is otherwise necessary
Ch 126. to present for acceptance it may be
Suy. wished with it to be given
Ch 68. 17 that the drawer or indorser may
Ch 152 no effect in the hands of the
Ch 213. drawer or if he can prove any fact
Kipp 14. which may show the drawer may not
Ch 50. intend to make payment.

14 Bls 66. The time at time of payment
73 K 425 when payment for acceptance is
necessary is that the holder shall use
due diligence to present in a way on
all bills.

whether a bill payable at sight is
to be presented by acceptance depends
upon the fact whether due or grace
are or are not allowed - Ryd. 2.

Presentation for this purpose as far right
should be within the usual hours of
business. Ryd no. ch. 14.

It has been s^t that the drawee must
immediately on presentation for acceptance
accept or refuse. Comm. Digest. But the
drawee must be allowed some time ad Ray 281.
and if it is usual to leave the Ryd 116.
like 24 hours with the drawee & if it is
more than the bill is thus left if it is 24 hours
not accepted within the 24 hours
the holder may consider it as
dishonored.

ad Ray 74;
15 P.R. 516.
Ch. 10. 14.
128. 136.
Ry. 1157.

f the drawee has been removed from
the place described in the instrument and
134 R 58 to be made at the new place of account
ch 70.

But if the drawee with whom the bill
has gone out of the state the holder
is not bound to follow him if he
has left a house demand sh^t be
made at his house, if he has left
none the bill is dishonored of course

ch 70:1 If drawee is dead presentment
132 136 should be made to his personal
representatives.

Acceptance is the act of engaging
to comply with the request in the
bill and a presentment by parol
will bind the acceptor. ch 71: 750.
200.

effectiveness of the drawee authorized
agent will bind the drawee but unless
the agent will present his authority
the holder is not bound to accept
the acceptance of the agent.

I and all think it doubtful whether
the holder is bound in any case to
receive an acceptance by the agent.
ch 23. 71:2. 1 Esp R 115. 209.

If the drawee is found to be an ~~auth~~
fme court or otherwise legally incapable
of making a valid acceptance the
holder may treat the bill as dishonored
ch 23. 71:2.

of promise to accept at a future ¹⁸⁷⁵ time
hereafter in some cases as an ¹⁸⁷⁵ acceptance
in presenti - ex. can the Banker
bill and I will accept it. 5 East 14.

that a person may bind himself by
a promise to accept a bill to be
drawn in future & then the promise
operates as an acceptance - but
rule needs when the promise was

Chap 571 attended by circumstances which
573:4 induced the maker or holder to
1 East 40 take the bill

3 King 1853.

14 d 74.

108th 715.

611. ..

12 Madox 410. And an acceptance after the day
Ch 73:4 of payment will bind the acceptor
51. tho' in this case the drawee &
indorser are discharged until they
are duly notified of non-acceptance
or of non-payment at the day.

of an acceptance made after the day of
payment binds the acceptor to pay
immediately ad Raym 304. 574.
East 45. 12 Madox 410. contra R 75.

Where there is a system of bankrupt
laws the drawee is not estopped in
accepting after he knows of the
bankruptcy of the drawer - but
if he accepts before notice he may
safely pay for the law protects him
in laying. 2 HBL 534 & R 711. Ch 74.
151:2.

An acceptance may be absolute conditional Ch 23. 74
or partial but the holder is not bound 103. 110
to accept any but an absolute acceptance Ch 214
& may treat the bill as dishonored unless 163. 43
the acceptance is absolute.

If however the holder chooses to 214
receive an acceptance varying from the 648. 1194
bill & if he gives notice to the other 1112
partner of the nature of the acceptance 2 Wil 4
they will not be discharged. 13 R 102
Ch 74:5
174:81

What amounts to an acceptance is a
legal question of law.
Ch 75

In whole acceptance is an account
to pay the bill according to the tenor
The usual form of a written acceptance
Ch 73:5 is by writing 'Accepted' & signed by the
Comd 401 acceptor or his agent or so the time
Bull 270 writing of the name by the drawer or
Ch 76 not agent. A 'Accepted' without but
by 50 not signed is an acceptance. &
indeed any act signifying an intention
to accept is an acceptance --

A oral acceptance Stra 643. 1000. 1st R. 10
3 Bull 1674 Conf 571. 2 Wm 9 East 103. 4 Esp 72
and they rule holds the time as no
consider for the acceptance is between the
drawee holder & acceptor

I promise to accept obtained by draw
does not bind the acceptor in favour
of the person presenting the face tho
if thinks, the acceptor must bind in
favour of a bona fide holder. 3 Bull 1669
Ch 77.

Bills of Exchange ch 3.

of written acceptance need not be
on the bill. Atta 643. Ryd 4.

Where there may be an implied acceptance but to constitute such an one ^{Ball 277}
there must be some act or circumstance ^{Ch 73} from which it can be inferred that the ^{15th Decy}
holder was induced to believe that ^{Hard 275} the bill was accepted. As there is
your bill will be right.

Again an acceptance may be implied ^{10th Dec} from the drawee's keeping the bill ^{Ch 77 4.}
unreasonable time ^{Hard 278.}

And indeed any act of the drawee ^{Ball 270}
which gives credit to the bill & prevents ^{Ryd 100}
the holder from sending notice of dishonor ^{Ch 77}
is an implied acceptance.

of conditional acceptance is an agreement
to pay the bill on a contingency &
hyp 161 if the holder receives such acceptance
ch 23. he must give notice to the other party
74: 57: 9 or they will be discharged
103. 180.

+ if then the drawee writes thus accepted
if remitted for. or accepted on acc'
of such a ship when in cash for such
a cargo. this is cond^t. stra 1152. 1112
2W^t b^r Corp 571. 1CR 182. 12 Mod 447
Ch 11: 50. 6 Banc^t P 218. when once in p^p: of the fund
the bill shall be paid held to be an acceptance the other p^t
gave notice of dishonour.

of cond^t acceptance it will become
absolute of course as soon as the
contingency happens. stra 211. Corp 571.
1CR 182. Ch 10: 1. 101: 2.

where the drawee accepts in writing
long 26: 96 the cond^t if any is intended must
Ch 10: 1 also be written otherwise the cond^t
Bank 112: 3 will not avail the acceptor agt
a subseq^t bona fide holder with
notice.

such a cond^t is however binding as
between the parties to it its invalidity
is not founded on the superior
solenity of writing. as agt a subseq^t
holder.

But if the original holder gave no value or had actual notice of the condition he can not recover unless the contingency has happened.

But if any intermediate holder gave value & had no notice the original holder may then take the place of this intermediate holder.

of partial acceptance is absolute str 214 but diff^r from the term of the bill Com b 452 as to pay at a diff^r time, or a diff^r Nolled 190 sum. or part in money & part in goods str 1194. ch 81.

The holder may refuse such an accept^r and treat that bill as dishonored.

Where the acceptance is partial if the holder does not intend to discharge the principal parties he must give notice of the nature of the acceptance if he accepts the acceptance or if he refuses he must give notice of non acceptance.

to be given notice that the sale of
157 R 320 dishonored probably be cannot after
the money take advantage of the parties
acceptance, see side 6 and 218.

Whether an acceptance is, practice
or a question of law.

Wils 1878 An acceptance is binding in favor
33 R 183 of a third person or page indorse
42 R 339 the author consider making to the
drawee & the fact is known
to the payee to

24 R 222 Hence an acceptance by the Ex'r of
3 Wilg. the drawee is an indorsement of accept
2 Atla 1200 and will bind the Ex'r tho he has
2 Ban 1225 no assets.
13 R 487

And the same rule holds of an
indorsement of an Ex'r.

The obligⁿ of an acceptance is
irrevocable^x but if acceptance is made in a foreign country by the law str^g 33:
of which it becomes invalid in that ch⁵⁹ 00
a certain event or that event happens & b^r
ing it becomes invalid here.

This obligⁿ may be waived of course
by the holder, until deed or writing Doug 236 a
by bare parol upon - this is not 247
in good law of contracts at least Opa 47
the rule is founded on the equity Ch 03 697
of the law merchant.

Hence a message sent by the holder Doug 236:
to the acceptor that the affair, or 246.
was done with was held a discharge ch 84.
of the acceptor and the rule will
have been the same in this case had
the acceptance been for value & not
an accommodation acceptance.

unless the notice occurs last -
Ch 14 the bill from the drawee & takes the
drawee promises on the back of the
bill for payment at an enlarged
time

If the acceptor on these facts
cannot be discharged - the liability
of the acceptor is, however - the
transaction with the drawee is for
the advantage of the acceptor &
subject him to no hardship or
danger.

6 An alteration by the holder of a partial
into an absolute acceptance & then on
4. 1836 the drawee refuses to pay, an alteration
May 28 back to the original partial acceptance
being held by no distinction of the bill & the
Ch 15 acceptor may held not to be dischargeable

He thinks this wrong. the holder in
the first place maintains without
the acceptance will be forced -
but when acceptance is written on
the bill not the drawee's it is the
acceptance is the holder with the
authority of the acceptor.

the drawer to assign goods to the drawee
in which case where the prospect of profit
on the road, or the considerⁿ of the acceptation
if the holder take the bill of lading &
discharge the acceptor.

The act of acceptance when the terms of
it import nothing to the contrary imply 1616, 115, 7
that the acceptor is indebted to the talk 130.
drawer, this presumption is irrebuttable as no Ray 88
between a holder & the acceptor & as Beale 455
between the drawer & acceptor it is prima Ryd 156.
face evidence & the drawer may sue
the acceptor on the bill when the
drawer has been compelled to pay -

But in this case if the acceptor, Rayd 156
the bill he may recover from the Ch 163, 101.
drawer if no one more than he did 203, 5
not on the drawer, 1616, 137, 70

If the holder makes the acceptor liable 1616, 112
he is discharged & also the indorsee 203, 112
is ^{not} ~~not~~ ^{com}est discharged - the acceptor's 3 do, 18
liability is primary & what discharge in 181
him discharges them all.

5R² 1670 When on presentment for acceptance
15R 712 the drawee refuses to accept or accepts
20R 658 h任意ly re notice must be given
24R 700 to all the parties by the holder
Ch 54 658 that they make provision for their
own security according to their finding
if notice is not given in such a
1R 406:9 who had no notice is discharged.
23R 182 the rule formerly was that the party
24R 660 insisting on a bill of exchange must
24R 709 prove actual damage from the want
Ch 87 191 of notice, but now the presumption
LJ 3 208 is in favour of there having sustained
132:3 damage, now therefore the holder must
prove that no damage is sustained by
the deft. & that he is not exposed to
any damage.

1R 405 if from the date of the bill to the
712 time of payment the drawee has
20R 713 effects in the hands of the drawee
24R 660 the drawer is prima facie unimpaired.
1B 702 by want of notice. In this case it
340 230 is presumed that the drawer knew that
55R 230 his bill was & would be dishonored
1G 733.

7D 515 The holder takes the risk.

581

3 Esp R 158.

But if the claim had in fact effect
in the court of the admiralty, it would proceed
upon the same construction - claim and will be
and the admitted fact of no actual damage
damage will not in such case require
want of notice.

and will resort to a provision in
it has been held that the party
indemnified with a knowledge of 24263.
the maker's insolvent the machinery 15140.
containing to the time in question 12916.
from which date it is not certain 16321.
notice of non payment by the maker 24360.
The decision is not recorded in 18 East 117
Engl. but it may be considered 7 East 350
in the country and in the country 2 Conn 120.
The decision has been denied 2 Bain 243
that is to say the English rule
is correct 4 Cranch 10.
10 Moll 552
2 Mass 45.
10 Conn 9.

If the indorse has effects in the drawee's hands but is the drawee has now the drawee is not in the act entitled to notice 109 R 575. C 11

If however the drawee had effects in the hands of the drawee at 109 R 477 the time of drawing no amount equals in expense with notice 575 R 405 tho no drawee can have occasion 2 R 330 from want of notice - so introduce 2 H Blon exceptions to this rule will create 7 East 359 called uncertainty.
109 R 364 (n).

Precisely the same rule holds in favour of the indorse, ie if the indorse of value for the bill he must have notice -

and if the drawee, instead of the drawee before hand can't be accepted this will not dispense with notice the drawee might have changed his name 2 H 1 R 62 330 59 R 239 1 R 405 712 285 1 R 1355 1 B + P 652 2 B 6 R 300 824.

If the drawer has no effects in
the hands of the drawee the drawee ch.
may give that as sustained in Ch. 516
it does not want notice. Ch. 514

But Ch. does not believe this rule Ky. 1516
as cannot imagine any state of facts in
which the drawee can sustain
damages if he has no effects.

If the drawer has become bankrupt
at the time of non-acceptance Ch. thinks
notice need not be given tho. Ch. 516
bankrupt has no property & it would
serve no good to give him notice &
the signees are not parties

If the drawer absconds he is not Ch. 516
entitled to notice. Ch. 514

No obligation to give notice in all
cases may be excused - but in these
cases notice shall be given as soon as
as the impediment is removed.
If if the holder dies or is suddenly
taken sick &c.

If the drawee makes a conditional acceptance & the condition happens & they the drawee refuses payment the holder is not then liable to be delayed by not having given notice for the acceptance has become absolute

Ch 50 If the drawee accept partially the principal parties are bound to the extent of the acceptance until notice, but no farther so as to the residue the bill is discharged.

Mode of giving notice,
this is diff're in case of foreign
inland bills, with respect to the 12R710
former there is a prescribed mode ch 4c
of giving notice & of proving that by 13c-14
notice & in this case where notice 10R710 14c
is necessary a protest is necessary collod 8.
and the want of a protest can talk 13c
not be supplied by any proof what Ball 271.
ever, a protest is the convention 27R713
made of proof established by genl 53R234
law.

This protest is to be made in genl by 1 Jan 164
a notary public - he is an officer cargo &
recognized by your law his official collod 281
certificate of facts is evidence of
the facts contained in -

Full credit is given to this protest
in the foreign court as to the form
see 27R713. Ball 2714 & collod -

When a notary cannot be obtained by 137
in Eng^t, if it the protest may be
taken before a substantial man
& the notary. -

Chur. A protest must be made
at the place to which the bill is
presented or in what it is presented

2ndly. In this notice the protest need
not be accompanied by letter enclosing
Bill & the notice in the other however,
Holding must state not only the discrepancy
but the protest. Then have a
copy of the protest be sent.

In this case we would give a verbal or
written notice to the person holding the bill
and a copy of the bill & a copy of the protest

3rdly. It is said that the holder must make
up his protest himself but that the holder himself
is not in the main parties & does not
attend to say on the draw - But I do
not believe this.

Aug 10. A protest of an inland bill at Chur
Lyd 1404. merely said first man or 1st day
Ch 154. of protest is necessary to inflict the
holder by damages & costs.

This protest is made in the same
manner as the protest of foreign bills.

When the party to be notified are
not in the neighbourhood a notice 24 Dec 50
by mail is suffit & tho' it shd. be delayed
or wanting the donee still the notice Ch 25
is suffit.

Where there is no mail it is suffit if
notice be sent by the first ordinary
conveyance 24 Dec 565.

When a delay in sending may be shd.
excused by inevitable accident it shd.
be sent as soon however as the impediment
is removed.

As to time the rule is that the holder Bull 271
must send notice of non acceptance 24 Dec 564
in reasonable time to all whom the ch.
holder intends to hold liable. Hyamning
East 3 Camp 148

The general rule is that notice will be
sent on the day of non acceptance 4 Dec 174
if there is any regular conveyance or 18 Raym 743
that day or . . . on the next regular & the 829
conveyance — 24 Dec 565

This rule was formerly much less strict than at present. Told 27 Nov 75 Long 19
comb 152. ch 80

Ch 47. If the party to be notified resides
elsewhere in the same place when acceptance
by him is refused notice shall be given in
the same day -

Ch 47. Notice shall be given in one by the
holder or his agent but it has been
held that notice by the acceptor is
sufficient.

Ch 48. And notice in case of ~~the party in dispute~~
or by the holder shall be taken
advantage of by any of the other
indorsers.

When notice is necessary at all it shd
be given to all the ~~other~~ parties to
whom in any event the holder intends
to resort. 5 Ban 2670. 1 R 712. 16th 45
Ch 80. 414. Peake & 202. 203(n) 221. -

Ch 44. Want of notice to the owner is no
2 Ban 669. defense to the indorser in the latter &
12phR334 had due notice, the holder may
2 days. select any one party & look to him
Ch 99. 203 alone & give notice to him alone
Talk 131. 3 Each indorser draws a new bill.
ad Ray 443.

The consequences of neglect to give notice may be waived by matter of post ^{act of attorney} & payment of debt is a prior party 25 R 713 is a waiver of notice to a promisee ^{July 27} to pay the like.

Esp R 57

Lake R 202

CR 102. 132

158. 202:3

But if a party to whom notice has not been given promise to have ^{and} ~~and~~ 5 Dan 2676 a knowledge of the fact of non-^{and} 13 R 712 acceptance it is not bound by the CR 102 promise.

But this rule has been denied for it is held that this promise is no ^{and} 7 East 231 admission that he has rec'd notice 1 Esp R 9344 & that such promise will support 104. 9326 an allegation of due notice. 2 East 404.

It has been held by ^{to} Kenyon that a promise made by a prior party to whom reasonable notice of an acceptance has not been given who did not know that he was discharged does 2 East 409 not bind ^{and} 104. 9326 657.

It was decided in the same case
that the drawee having paid the
bill under such circumstances might
recover back the money in an action
for money had & spent.

Ch 10112 In case of cond^t acceptance want
of notice it need not the cond^t is
complied with before the day of paym^t
15 K 112 for then the acceptance becomes
absolute before the day of paym^t.

But it is held that if the cond^t is
not complied with until after the
time of payment mentioned in the
bill the holder will not be excused
for want of notice of the cond^t
acceptance - so in this case his
right to an enlarged time of paym^t
to the acceptor.

When a foreign bill is presented for non-acceptance the drawee may, ^{by l. 152}
except supra protest for the honor of 23. 100^{l.}
of, the drawee or of any indorser. ^{l. 103}
This may be done in any case where ^{l. 264}
the drawee is willing to voluntary ^{l. 134}
in the name ^{l. 152} ~~and~~ of, ^{l. 134} ~~and~~ ^{l. 152}
to credit in the drawee or indorser. ^{l. 103}
This is the usual case where the
drawee is ~~willing~~ to accept on
account of a trust person on whose
account a bill is drawn.

In this case he ~~shall~~ immediately send
a copy of the protest to the indorser
he ~~had~~ when drawn &c.

The object of this mode of acceptance ^{l. 263}
is, to prevent the drawee from ^{l. 153}
the drawee has effect of the drawee ^{l. 155}
in his name, which is raised by a ^{l. 156}
such acceptance. ^{l. 103}

The effect of such acceptance is:
to give the acceptor supra protest
an action on the bill agt the party
for whom honor is accepted. & on
paying the bill he acquires a right
of indemnity agt all the parties
prior to him for whom honor he
accepted. so taking the place of him
for whom honor he accepted.

But the acceptor upon protest assumes
no right not to pay his bill to
him or whereupon he accepts, for
he may take the place of him for
whom he has the bill accepted.

Ch 145 if the drawee refuses to accept in opn
Lyd 153. for an amount drawn upon receipt for
cutting the horse of another on the river
Rams 238. & his right as 'payor' is preserved
the same as the drawee who has then
had the accepted paper protested.

Ch 152 if Bill previously accepted upon protest
in opn Lyd 154. or in general for the horse of any
horse may be accepted by another
drawee of the horse of another party
& so on ad infinitum.

Ch 155. It has been said that the holder is bound
indeed to require an acceptance upon protest
Lyd 155. if offered by an irresponsible drawee
but this cannot be law. The implied
engagement of the drawee & indorsees is
that the drawee will accept.
Indeed if the drawee refuses to accept
according to the law the holder is entitled
of action in consequence.

Bills of Exchange (Part 4)

If after an acceptance ^{of} ~~upon~~ protest to a bill
drawn on him by another to make a Rule 457
simple acceptance it can be of course declined 104
but by the consent of the holder & stranger
who accepted such a protest he may do it.

If the acceptance under protest is as binding ^{as} Rule 455
on the acceptor as any other acceptance ^{and} Rule 410
of his liability is the same as the liability ⁱⁿ Rule 106
of the party for whose honor he accepted Rule 452
as have been or rather is!

If he accepts the bill for the honor of the Rule 457
drawer any endorser who has been a witness ^{to} Rule 103
to pay may resort to the acceptor ^{Rule 13}
such a protest. ^{or 105.}

If the bill is accepted for the honor of
a particular endorser he is liable to any ¹⁰⁶
subsequent endorser compelled to pay the
bill!

If the acceptance is for the honor of the ¹⁰⁵
drawer alone, the acceptor ^{only} has ¹⁰⁶
a right of indemnity ^{against} the drawer &
only. ^{Rule 444}

6. Transfer.

Whether a bill is negotiable or not is,
2Bn 1816. matter of an enquiry on the face of the
1BR45. bill but in most cases enquiry may be
done 603 made of eminent merchants - the practice
Watson 152. is however seldom resorted to.

42R28. In some countries transfer can be made
14B1607 only by the payee or by some person
Ch 10 who has derived from the payee the legal
1262 title to the bill.

1Bn 42. The same rule will hold of bills drawn
3Bn 1816. to be delivered. the person who has
7CR427. the legal interest is the only person
1B1R428 who can make a valid transfer.
Dong 61a This rule however holds only where the
638 person also takes the bill. Known that
the person transferring has no right
to transfer.

It alegt. bona fide holder for value
then will not be affected by the
want of title in the transfer.

Transfer.

if the payee or endorsee becomes bankrupt 2A.B.C.335
the right of transfer vests in the assignee of
and in such case such right has relation Kgd 107
to the time of insolvency.

On the death of payee & the right of 3.W.41
transfervests in the personal representative 2B.M.225
trusts.—

2B.M.225

1.R.417

1A.B.C.622

If a bill is payable to or for the use of a bank
of P. the right to transfer is in & 2W.M.307:4
the trustee Kgd 107:8
Ch. 1.

Bills are usually transferred after
acceptance & before the day of payment.
But a transfer may be made by 2A.B.C.470
the bill is made, or rather the 2A.B.C.474
operative act of transfer may be done 2A.B.C.474
done before the bill is made. 1A.B.C.313-
as by endorsement of a blank piece of
paper.

it could transfer me to make after
July 570 the day of payment but it is dangerous
7 R 430 to the indorser & the indorsee however
8 Ban 1570 cannot object to the transfer on
7 R 10 the ground - as is found by effectually
(c 107) as if the instrument was made before payment
7 R 423 - the new party however may object
1 Wil 230 and show an equitable defense, i.e.
32 R 13 the parties who indorsed the bill before it
was payable. but the indorsee may sue
any indorser who transferred the bill after
it was due & the latter cannot set up any
defence on the ground the bill was rec^d when overdue
14 Bl 84 - if a bill is indorsed after it has been
paid the instrument binds no other
4 R 46 person than the party making it
4 R 47 but this rule must not be forgotten
but the rule must not be forgotten
made at the time of payment or at
any subsequent time. for if the holder
receives it before the day of payment he
is not liable to this equitable
defence.

A bill paid in part may be
indorsed over for the residue.

✓ Dray 360.
Batch 466.
Nollod 213.
Batch 05.
2 Wigs 262
Batch 01.

The mode of transfer is governed in gen'l
by the legal operation of the instrument
& not of course by the terms tho' in 14 & 60
gen'l the terms & legal operation ch 115 &c
coincide.

Bill payable to a fictitious
person, is transferred by delivery
& the indorsement is merely void
as to the transfer of the instrument
by it.

A bill is truly paid in the other analogous
case by mere delivery, yet when it is
so payable to a person or
to banker & company, when it is
indorsed in blank

✓ Dray 442
Batch 05
2 Wigs 452
? Ban 57
Batch 00
Ban 2
Batch 00

No technical form is necessary to make a valid transfer according to the law. Common Law Rule No. 28
180. ~~See also~~ ~~Section 180.~~

The indorsement may be a check-in full or indorsement Ag. 18. 117

mark of blank indorsement while it remains
so. so does not have to transfer the
adhesive until it would enable the holder
130. 117 to tell up the indorsement as he
conquered believe of an indorsement or by a
law 117 associate title. 117
117. It is well that it be filled up
at the trial.

But at present it seems that a blank
indorsement ~~per se~~ is suff to transfer the title
to a bona fide holder (Ch 174.)

Rule 117. Hence while the indorsement remaining
123. 130. in blank an action may be brought
to Ray 117. in the name of the indorser but
117. not when the indorsement is filled
Fuller 117 up

2. Rule 117

244.

✓ So while the indorsement comes in
blank the negotiability or the instrument ^{of} it ^{is} still
cannot be affected by any restricting ^{by} ^{any}
indorsement ^{which} comes ⁱⁿ blank for ^{example}
the holder may strike out the negotiable ^{word} ^{of} ^{the} ^{instrument}
indorsement & fill up the blank indorsement ^{but}
by an order to pay money ^{to} the holder

But this we do not hold since the
subsequent indorsement does not cover ^{the} ^{word}
the interest - the holder then has no
right to strike out the indorsement.

✓ But a bill payable to order is not ^{7ellod 87}
negotiable by mere delivery unless it is ^{116 Bl 606.}
indorsed in blank by the payee or by ^{long on or}
some ^{subseqy} indorsee. ^{67 or 639.}

✓ An indorsement in full is one which ^{ch}
expresses to whom the bill shall be paid
and this per se transfers the interest
unless it is indorsed to one as agent
for the indorser.

The most usual is a bill regularly
drawn cannot be stopped in
any court but with what ever of
objection. Augt 24. 186 R 25.
Chancery Tr 557. Doug 17. 6.

Augt 25. Most bills drawn in any court
will be stopped in the chancery
if they are the following:

~~But~~ if there is a clause which has the
assent of both in the bill may it
come between the party of plaintiff
Chancery 186 R 25. Chancery
4. Oct 11. Doug 17.

Augt 30. of timber it will cannot be made
part of a bill written the court are on the
holders bill or if the court is held up
it will be the acceptor might be liable to a
Kyd 100. great multiplicity of actions
Chancery

Such an indent must however
bind the indorse the it cannot the
acceptor.

But if a bill is indorsed in part
now, before presenting it the drawee bank will
accept it as subject to being cashed in
trust & will not be compelled to agree
to pay according to the indorsement.

The drawer himself can never be compelled ~~to pay~~
in such an indorsement until the indorsement itself
was made before the bill drawn.

NYD. 4.
& Ray 360.

But after part of a bill has been indorsed
if it may undoubtedly be indorsed in whole
or in part the residue of the case is now
in hand, the acceptor is then answerable for
no two-fold debt.

To complete the transfer the bill which
is delivered -

Creation of a transfer

The indorsement is to almost
Sun 74 and respect the drawing of a new
Salk 137 Bill - ~~the~~
extra 771
Salk 61

In this principle the indorsement of
Collado, a promissory note is a bill of Exch:
4 & R. 42. and may be discharged as such
by one at least of the indorsees. Ch. 11. 170-1.
Salk 132.
Aug 74.

Raym 61 same as in case of a bill if the name
Salk 25 of the maker is forged the maker
2 Pa 22. is still liable to the indorsee

Ch 22. 4 and this 16th of the indorse may
be discharged by the indorser
neglect, peculiarity of the obligee
a drawer or indorser of a bill may
be, as by want of notice that the
note is dishonored, etc.

The transfer of a bill by law delivery
 if made for an antecedent debt
 or for a debt contracted at the time
 of transfer subjects the party
 making it to an obligation similar
 to that of an indorser as to the
 immediate assignee.

There is however, no similarity
 in the obligation where one in law 73 R 64
 has liability on the bill. but where '65 R 52
 a bill transferable by delivery is 2 dld 244
 transferred by law delivery the person 468. 52.
 delivering it is not liable on the layman's bill —
 case with the note amounts to 15 East 7.
 is that the person who transfers is Kyd 96
 liable to the person to whom he East 270.
 transfers it on the original consideration Ban 1525.
 if the bill prove unproductive Holt 121
 thus far he is liable unless the assignee
 assumed the risk to agreed, Esq E 66
 to take the bill as layman. in which
 case the assignee is not liable at
 all — and in no case is the assignee
 liable to an out to his immediate
 assignee.

When a bill is transferred by mere
delivery or a discount the signor
is not liable at all either on
the bill or on the note & consequently
by a discount it meant a loss to
the note, where money is advanced
at the time when the bill begins
to run, the risk of loss is saved &
shifted. 3 Ch 157. 1 Ch 147. Ryd 400.
Ch 109. 123. 63. Comyn C 289. 90.

1 Ch 113. The undertaking of the party to
4 Ch 225 a bill in several & distinct names
Ch 114. if one is taken in excess & voluntary
4 Ch 112.5 discharge of just one does not
discharge the remedy of the
holder nor the others.

1 Ch 45. If the holder of a bill transmissible
176 by mere delivery loses it or is robbed
7 Ch 427 of it & it afterwards comes into the
public hands & a bona fide receiver
3 So 76 for value before it is due the
holder may recover on it notwithstanding
any of the prior parties.

The robber or finder cannot recover
1 Ch 220 163. But it seems that if the receiver took the bill under
4 Ch 7 11. circumstances which ought to have excited his suspicion,
and he be guilty of gross neglect in receiving the bill
the same cannot recover Blanning & Payne 191.

When a lost bill is paid out of the usual course of business the drawers may be compelled to pay it over to the party who lost it. By the drawee pays it before the bill becomes payable 1 Esp 40. 150. 1 ch 150. 1 &c.

If a bill transferable by indorsement is transferred by a forged indorsement the indorsee becomes no title owner it he can record only agst the parties subject to the forgery.

Hence the true owner of the bill may record agst the acceptance drawn to them they have paid to a person claiming under a forged indorsement.

4 R 28
13 R 607
Long 61
637
Ch 115 157

If the driver of a bill has given a
protest it is his master's power to remit one
to him or a prosser may be paid all when
the bill has payable & if he refuses to give
it now the bill must be rejected as
dishonored.

One in my view of a bill lost by the
driver cannot or had not given a reason
but the protest must be made on a
copy of the bill to the drawee.

If the driver absconds the holder may
present the bill for better security &
give notice to the drawee postes 10 May
1743 Beams he will be ready. (61391)

This rule relates to a bill previously
accepted & when the acceptor afterwards
absconds for if the driver absconds before
acceptance a protest for non-acceptance
is proper.

Commonly this better security is given by a
mer'ls chng. third person who engages to become
liable as principal for a protest
and is like a second acceptance for
the honor of the acceptor.

I b trust that these rules apply to
foreign bills m^e.

The holder must present the bill for payment to the drawee at the time when the bill becomes due whether preceding, 23 R 581 accepted or not presented for acceptance. But if the drawee refused to accept still bulk 27 the bill must be presented for payment. Stra 1017 in concerning the latter part of this rule French 23 R 2470 presents it is unnecessary (Ch 244:300). Burke 187. 10 East 105 &c. And if the presentation is not thus made &c the holder loses his remedy ag^t the prior parties. If the drawee is dead presentation sh^t be made to his representatives or if none such at his last dwelling -

The presentmt for paym^t may be ch 132: etc excused by want of notice for non acceptance man. &c.

The acceptor himself cannot defend on Doug 235 the ground of a delay in presenting 247 for accept paym^t. 10 Ed 2d 31 Bailey 78 (n^b) 108 (n^b). This rule is not conformable Stra 222 to the gen^t opinion of law writers. Idem 43. It does not like the former rule - b^t the acceptor can't find out who the holder is.

133. 156:7.

According to some opinions an action will lie ag^t the acceptor without presentation for paym^t Ch 133. 10 Ed 2d 31 Bailey 78 (n^b) 108 (n^b). This rule is not conformable Stra 222 to the gen^t opinion of law writers. Idem 43. It does not like the former rule - b^t the acceptor can't find out who the holder is.

It seems usual to tell if the acceptor
intend to pay the note or demand
Lsh 255 or a sum less than the acceptor may
ch 134 wish or want of demand - this may
be diff from that which it may in
case of bills of exchange, not negotiable
it must have been paid on the prin-
ciple which is returned the last case
in favour of former opinion.

Ch 135 with inspection must be
made by a person capable of giving
his list & an attestation

Ch 136 1st Payment in case is to be made to
the drawee & not to a banker
Ch 137 present at the acceptor, drawing,
Ch 138 however a house of exchange in the
drawee's absence where a place of
affidavit present must be at that
place -

Ch 139 if the place mentioned is too great
house & the acceptor is absent there is
no necessity of a formal demand
it is enough to inspect the drawee's
books et is said - this inspection of
books is more suspicious -

If no place of payment is appointed
the acceptor has remunerated demand attorney
to be made on him or he can be
found in due diligence - this if
the acceptor has left the state in this case Ray 704.
case presentment at the dwelling house Kyd 125.7
is suffit

1 Esp R 511.
Ok 131.

No demand on the drawer is necessary
to subject an indorser nor a claimant & attorney
on an indorser to subject a subsequent
indorser or a prior indorser of course.
As to the holder the liability of the
drawer & indorsees is coordinate. as
between the drawer & indorsees there
is a priority of liability.

Where a bill is payable at a certain
time after date, or after sight or 4 JK 170
at once it is not payable on Ch 143.
Days mentioned but days of grace 4 JK 157.2
are allowed and presentment for Kyd q. 10
paym't must be made on the last 121-25.
day of grace.

1 Esp R 59.
261.

When a bill is payable on demand (or at sight) days of grace are not allowed according to the weight of English authority. Burn. ii. 50.
when less than a month & Burnet 40. (ch 34)
(1 John Ch 32) 2 cases R 343. 2 cases R in
either art. 4 cases 147 contra.

The number of days a grace is regulated by the law of the place where the bill is payable. *Penn.* 120. *N.Y.* 130.

where a bill is drawn payable after
date to the day of the date is
excluded in the computation of
the time & Bill dated Aug. the
first day of Aug 2:

to where a bill is payable at
a distance. It means at a given time
after sight the day of sight is
extended. \Rightarrow Raym. 210. & R. 212
Means he is to call. (Porterance 376 contra)

Wente 358:10 His rule is opposed to the quick
87R 623. rule of the C. L. as if a case is
bought 714. made & certain certain says after
on 28 Nov 440. date the day of the date is included
so in bonds & covenants —

If however a lease commences 'from the day of the date' the day of 'the date' is excluded.

in the command of a pecked man
to take effect from the day of the
date this distinction will make
the conveyance between us & it no longer
be the intention of the pecked
to take effect in future - but
in this case at no man's request
we are present the said conveyance
to take effect on the day of the
day.

4. R 337
Conn D
part 63
Recd. 46
base 1.

If by the terms of the bill it is payable on
Monday & 2 days of grace are allowed
presentment must be made on Thursday.

By the English law and our own Sundays
are included in computing 5 May 143
days of grace - If the last day of the 120
grace is Sunday or a great holiday. Kyd 120
presentment shd be made on Saturday
or the day before the great holiday
In other cases presentment before
the time is mainly void

It is a well known fact in
the animal kingdom that birds have
longer lives than mammals of similar
size & weight.

If we take a pugnacious male or
at a reasonable number of months in the
date of his maturity he will live
more than 14 years - This is the record
in the case of Mr. 141 of the 224. which is

Bills of exchange. (135)

The day of payment being ascertained the bill shd be presented for paym^t where there Kyd 125.
are hours of business within these establish^t hours. —

Payment shd be made to the party Poth p 164.
having title to the bill & paym^t to Ch
any other will not in genl discharge Vent 310
the acceptor &c. Cuth 5
Kyd 107:8.

where money is payable on a day certain 4JR 173
the genl rule is that the party bound 1Sand 287
has until the last convenient time of Ch 153.
the day to pay —

But in case of foreign bills the 4JR 174
acceptor is not allowed till the last Kyd 121
hour of the day for a protest must Ch
be made on the same day. & time must
be allowed for this,

But it has been held that the Kyd 124
acceptor of an inland bill is entitled
to the whole of the day but this
rule is doubted & JG thinks very properly
It certainly cannot apply to cases where
there are hours of business & in all
other cases it is held that tender must
be made before dark how then can the
acceptor have the whole day when a
tender after dark will not discharge
him? —

If the holder componans with the
Ch 385 acceptor the other parties are
Cokeable discharged with consent of the
100. pinc parties.

Ch 736 If the holder recoures of the acceptance
straining him less than the sum due in
Ball 273 part satisfaction with consent of
the pinc parties the other parties
are held to be discharged - It
can cover no reason in this rule
this payment no cause is altogether on
their advantage. vide Ball 271: 85: 5^b
Ch 156. no Coke Bl 167.

It is said to be a doubt for whether
the party bound can insist on a
written receipt as a condition of
payment but I think there is no
but can insist on a written receipt
as a condition, the con act
is unconditional to pay the
money - Ch 157. to Peake R 174: 80. (6k 387)
de Raym 16. - sed vide 2. & Bl 31.
Peake R 74: 80 or 174: 80.

or will accept on the back of a
bill not expressing by whom paym't was
made is prima facie evidence of a
paym't by the acceptor. Peake R 25.
Ch 209. 157. 8. Ch 381. 60 Kegan 142. 2 Camp 6432.
2 Dallas 144.

If paym't is refused on presentation
only made the holder must in gen'l
give immediate notice to the principal
parties or they will be discharged;
& in case of foreign bill a protest
must be made & notice of the
protest made. Ch.

This point has not been judicially 1165 law
decided in Engl' & in one case Judg's Court Mr.
Van Nop. has decided that such notice
is unnecessary - sed que - why is present
necessary to subject them if notice of it
need not be given?

If on presentm' for paym't part only is
h' notice of that fact must be
given protest made &c. Ch 156. 100.

Section or non payment or a negotiable
4.1.172 bill must be made on the day of
when it is due to you & notice given to
holder the bill having
13 R 10.
17.1.1724.
1.4.1653.

4.1.172 In case of inland bills notice is to
be given or sent on the day after non payment
2.4.1.1725 or on the next regular convergence
13 R 16.
(Ch 401)

Ch 163. When a foreign or inland bill is
Kyd 152. dishonoured by non payment & a
Means 402 protest made by payee supra a protest
may be made by a stranger for
the honor of any inland or draw
some confusion with respect to
inland bills it seems however that
that in such a protest of an
inland bill is not necessary yet
a protest must be made to enable
the payee supra protest to recover
in the till w^t him for whom
he may be paid to -

When the drawee has made a simple acceptance he cannot pay for the honor of any party if he cannot acquire the rights of a payer supra protest.^(Ch 408) for by his simple acceptance he has become liable to indorsers, but the person who pays supra protest has a remedy agt the indorsers.

But if the drawee has actually had the no effect of the drawee, he may after simple accept. pay for the honor of the drawee to all him a remedy on the bill agt the drawee.^{Ch 408} as between these parties their relationship^{Ch 153} rights depend entirely on the fact^{f 155} of the drawee's having or not having effect^{f 155} of the drawee in his hands.^(Ch 408)

payment for the honor of a particular sh^t not be made until after protest.

Beams f 653
Ch 105.
163. (Ch 408)

If the acceptor for the honor to has, Beams f 58 rec^t an acceptance supra protest will Ch approbation the acceptor may pay kyd 154 with protest for non-payment - this will Beams f 48 w^t perhaps be better understood if expressed thus If the acceptor supra protest for the honor of a particular party receive his approbation of the acceptance he may pay the bill with any protest for non-acceptance payment

Promissory Notes

of promissory note is a direct instrument^{in writing}
in 1867. to pay a sum of money to another
by &c. named or his order. or bearer &c.
in

A note not containing the words
or order &c is not a promissory
note, it is mere evidence of a simple
contract tho' perhaps in pleading it may
be counted upon directly (vide ante)

In substance such a note is analogous
to a bill drawn by the maker or
hisf. such note at all are not
negotiable tho' expressed payable
to order &c. but ex' chm are merely
evidence of a parol contract & no
instrument - talk 124. & Raym 157: 4.

King 1st 4:55 even such notes were made
Ch 167: 4 negotiable like ordinary bills of exchange
& made perpetual by law - This stat
converted them into instruments

✓ Promissory notes are entitled to legal tender
in England Doug, Ward v. Hougham and
4 Ch 182. Bull 274. Ryd 135. 1. R' 107 -
So in County Court Henry 2 Conn R. Starke v.
Lind.

Bank notes are entitled to legal tender
in general law and common law but no
notes are payable certain laws after
date sight etc.

These in court are treated as money
1 Ban 457. 7 R 554. C & H 335. 1 A 172.

To some purposes they are & must be
bills if then they are not bills the
corporation issuing them may be sued
on the Bill or a sum paid to.

But money had & rec'd will not lie for court
bank notes - however the person 1 A 362 by
action - this action for money he rec'd 2 B 61 R 26
his note for money strictly so called. - 174.
This rule applies only to cases of bills found to. Attst. Ban 2 510

- the note is under &c &c when there is no
money for the bill money has & rec'd a right to
the proceeds of the bill -

But unless the bills are produced at the trial
receipt of the money for them will be presumed
Chancery Doug 138.

or a note or note, no technical
from words Ch. 1. S. 1. 1. 1. 1. 1. 1.
the City, on 2d Oct 82. To Raym 130.

But the mere acknowledgment of debt with words amounting to a
promise will not be construed a
meriorary note &c. S. C. H. 1. Explained

The essential words are the same as
those of Bill of Exchange 55 R 416.
4. 160 242. 1. Bills 323. 45 R 140. 70 R 243.
713 They must be payable in money
only & not on a contingency &c.

J. R. 24, it is said that ^{between the original parties} the note will lie
on the note, if it ^{between the original parties} any of these
wishes - but it can ^{not} give no
force to count upon it for it
will be no evidence & indeed it is
when counted upon mere evidence
of a simple contract liable to be
contradicted as any written evidence

Remedies.

of bumpot is the usual remedy on bills of exchange & promissory notes. & is said to be the only action as between parties not in priority, but debt will lie between parties in immediate priority.—

The holder when the bill is dishon^r may 42 R 411 sue each of the prior parties severally ! Ch 179 & the if the drawee has accepted & refuses to pay he may sue the acceptor Raym 92 7 R 64 & each of the other parties separately. McCor 144 404 521 Stra 515 15 East 7 26

But no action can be maintained on the instrument agt an, one whose name is not at it — Ab.

And if the drawee having accepted refuses to pay & the drawer has been compelled to pay he may maintain an action on the bill agt the acceptor.

which says the drawee may sue the
drawee for not accepting a bill
drawn on him - but this is not
law, as the drawee can never maintain
an action for non-acceptance on the
bill.

7.R.571. And the rule is good that any
Chm. Party who has been compelled to
sign a bill may maintain an
action on the bill agt any person
party.

4.R.470. In suit an action will not lie on
a Bill agt any one who became
a party after the holder - Ex where
a bill has been indorsed back in
a circly. as if it indorses to B &
B's chm. of cannot sue B. But chm.
can of course recover agt any indorser
prior to his first indorsement agt
the acceptor - & an indorse before
acceptance may release of the acceptor

An action will not lie by the holder ag^t the party in immediate privity unless the holder gave value to him for the bill. Between these parties the cause is examinable—
 73R121.
 571. 350.
 Doug 574.
 1B4P651.
 (2B446.)
 contra,

And the Plf in the last case can recover no more than the cause is no more than the Plf had. Hence if the plf sues the drawer he can recover not more than he paid for the bill.
 2Ph22(n.b)
 7John 351.
 113John 52
 15John 171.
 Ch 44
 2Bn 11aa
 (ad finem)

The holder may sue all the principal parties at the same time but he can have only one satisfaction, but each of the other debtors must Kyd 112. advance the costs.
 116. 198.
 Ch.

And in an act^r ag^t the drawer or indorser to pay the sum of the bill & the costs ag^t him the C^t will stay proceedings & he need not pay the costs of other actions.—
 47R 691.
 575
 Ch
 Kyd 101.
 116(R) 749.
 47R 691. Mars
 Ch 14.3.

If the holder comes to eat at all
he may have et appas & somme
au ~~to~~ pison - but he can take
out only one fief for only one et
eat goods. Br 575. ch 183.

For the boy is a pledge but
goods are the means of obtaining
interfaction.

But the meaning of this rule
must be this the holder can
have but one fief at a time.

Declaration

The holder may in quiet form his action on the bill or on the consⁿ of it & give the bill in evidence. 33 R 174
and the practice now is to add the Ryd. 17.
in many counties to a specific count 199a 58.
in the bill Bill 323
2 Ch. 1576.
Wm. 1582.
Ch.

In declining a bill of exchange it was former custom to state the reason of merchant but it need not even be referred to. Raym 21. 175. 1542. 88 part 12.
207. 270. Ch 44. 57 204

In declining on notes it is usual in Civil Lit. to decline that the deft. is become liable by the it of fact. that the decl may appear to have been bound in the start & not on the cons.

In the count on the bill a note ch 115. it is not necessary to state a consider. 364. for it implies a consid. Raym. 151.

Perfect unnecessary - 40 R 338. 1 Adm 386
Ch

When the form & the legal effect
of the note from the Lth, be decided
upon according to the legal effect
P.R. 171 335 282. 48. 645 116 Br. 313. 589.
246 Br. 24 288. Doug. 62. Br. 6. 1. Night.
C.

It is not to be admitted in evidence
in the 289 in a bill of exchange to make a
bill & substantia promise - because the law
Ky. 190 uses, a promise on the custom of
Aug. 58 merchants - But the drawing of
in 181 a bill mere shows an indebtedness
not a promise - The promise is
never usually alluded to -

The form of a bill acceptance
contains no express promise. It is so
that the law will find a promise
from the acceptor - But this is
precise the law in debt a sumpt
the law raises an assumption but
still the promise must be stated.

The indorse man sue his immediate
indorser as on a bill drawn by the 4th 149.
indorser payable to himself so Bill 674
where there is an indorsement in blank & Raym 743
any holder may sue the blank indorser
in this way —

In an action at the name or indorse Rushan
the Plf must in suit alledge presentment & refusal
to pay & due notice of non payment
and in some cases the Plf th
must alledge presentmt for acceptance R.R. 70
& of notice of non acceptance. R.R. 712
The omission of any of these allegations
is fatal even after verdict.—

In the common court the instrument is 169 R 426
between some parties good evidence. Stra 125
But when the bill is introduced for 116 Bl 622
this purpose it may be contradicted Ch 189
by any evidence it is more probable 191 192 &c
this evidence in such case when 3.7 R 614
not counter upon it loses a little 2 moments
of its sanctity.

Under the common count Ch 515
R 174 may go into evidence of the consider-
ation paid for the bill or into -
L 267 245 the P. & V. do not negg the orig.
least of simple contract
Ch 114
Ball 137

If the drawer not having effects of the
drawer has the bill the bill in the
hands of the drawee &
is evidence of money he kept out &
expended for the use of the drawee
but the drawer must prove that he
had no effects of the drawee for
the presumption arising from a
simple acceptance is that the
drawee is indebted to the drawee
where however the bill is accepted
or p^o before protest for the amount
the sum lies on the Dft.

L 267. 72 R 576. 1 Esp R 332. ch

L 283. The holder again may maintain agt!
Ran 1876. the drawer an action for money had
Bayley 95 & recd t^e bill is prima facie
evidence on this count & this is true
of the remotest indorse - the drawee
is presumed from the bill to have
acc^d money from the payee to pay
to him whom the payee shall appoint.

It has been held that a simple acceptance is evidence in favour of the holder at the acceptor of an account stated.
1866 R 239 Ch 1912. The reason of this
is not very obvious -

Evidence,

Is of course governed by the pleadings
Ch 194. In an action on the acceptor
the acceptance must of course be proved. ^{Esq R 1415}
proved & where the acceptance is in the
writing the handwriting of the
acceptor is usually proved. If the agent
in writing the authority & hand writing
of the agent must be proved

A confession out of ch by any party ^{Esq R 103}
is good evidence ^{not} of itself ^{Esq R 645.}
^{1051. 399.}
^{1052 R 143.}
^{Section 1.}
^{Laws of Eng.}
^{1542.}

In an action agt the acceptor by
17 R 11. an inlaser the hand writing of
1 R 11. the first indaser must be proved,
18 R 11. and as the case may be of the
other indasers - if the first
R 11. indaser is in blank only the
hand writing of the first indaser
18 R 11. need be proved but if all the
indasments are in full the
hand writing of each must be
proved - & to show the title of
the file

11 Rule the name of the suit is agt
R 11. the drawee.

where the action is agt drawee or
17 R 11. inlaser the def must show due
57 R 581. diligence to obtain payment from
5 Ban 2670 the acceptor or drawee.
17 R 11. diligence is proved by showing
286 R 565 presentmt for acceptance where that
77 R 581. is necessary & presentmt for payment
2 Ban 664. in all cases it says sed vide art
2 Ita 1007.
ch.

10 pf must prove notice of the
dishonor in most cas. 5 Ban 2670
17 R 11. ch.

In case of foreign bill protest also
must be shown this is the only
admissible evidence of dishonor.

27 R 13. . .
52 R 239.
28 Ray 443
Bull 270.
Peake 704

In an action not on indorsement it is not always
necessary to give a demand upon him &
that demand the object of the demand
and indorsement is coordinate.

Reed v.
C. & G. 3842.
Ex 153

Contra 27 R 13. 28 Ray 443.

If an indorser who has been compelled to pay
to pay & brings his action against the
person he must prove that the
bill was returned to him & that he
has paid it otherwise his indorsement
is evidence that he has not the
bill.

If the acceptor of an accommodation
bill sees the drawer he must prove that
he paid by himself or something in
equivalent as that he has been
taken in etc.

Where the def. claiming by mere delivery
the pt in specie is bound merely to
produce the bill, & this is suff^e evidence
of his title - ex

In case of a foreign bill the fact of
recognition & refusal is proved by the protest.
all 207 43 R. 75 Peake 674 off. ex

Bills of Exchange &c &c.

Debt on bills.

It has been held that debt will not lie by the payee ag^t the acceptor because there is no privity of contract. But in truth there is a privity. The acceptor agrees to pay the payee or any one who may be entitled to the bill. The objection is as strong ag^t a sum paid as ag^t debt to support a sum paid there must exist either privity in fact or in law, Ad Raym?

St. Ch 13.

Besides a bill of exchange is an assignment of a debt & the drawee on acceptance becomes indebted to the assignee instead of the drawer.

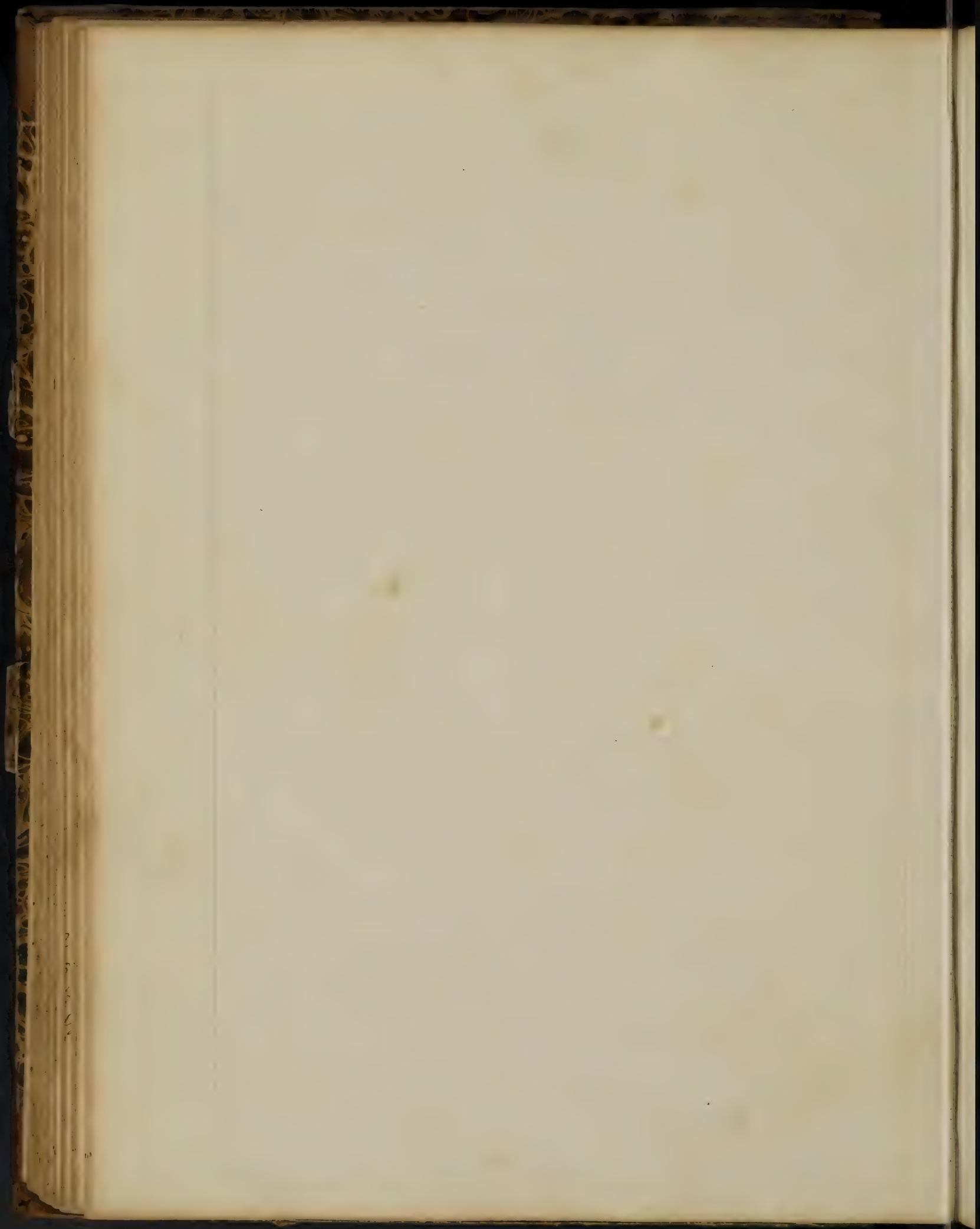
Another reason given for the rule is that the engagement of the acceptor is collateral but this is not true he is regarded as the orig'l debtor.

And it is a general rule that when the C is a custom raises an obligⁿ to pay a sum of money debt will lie Comn Dg debt (a).

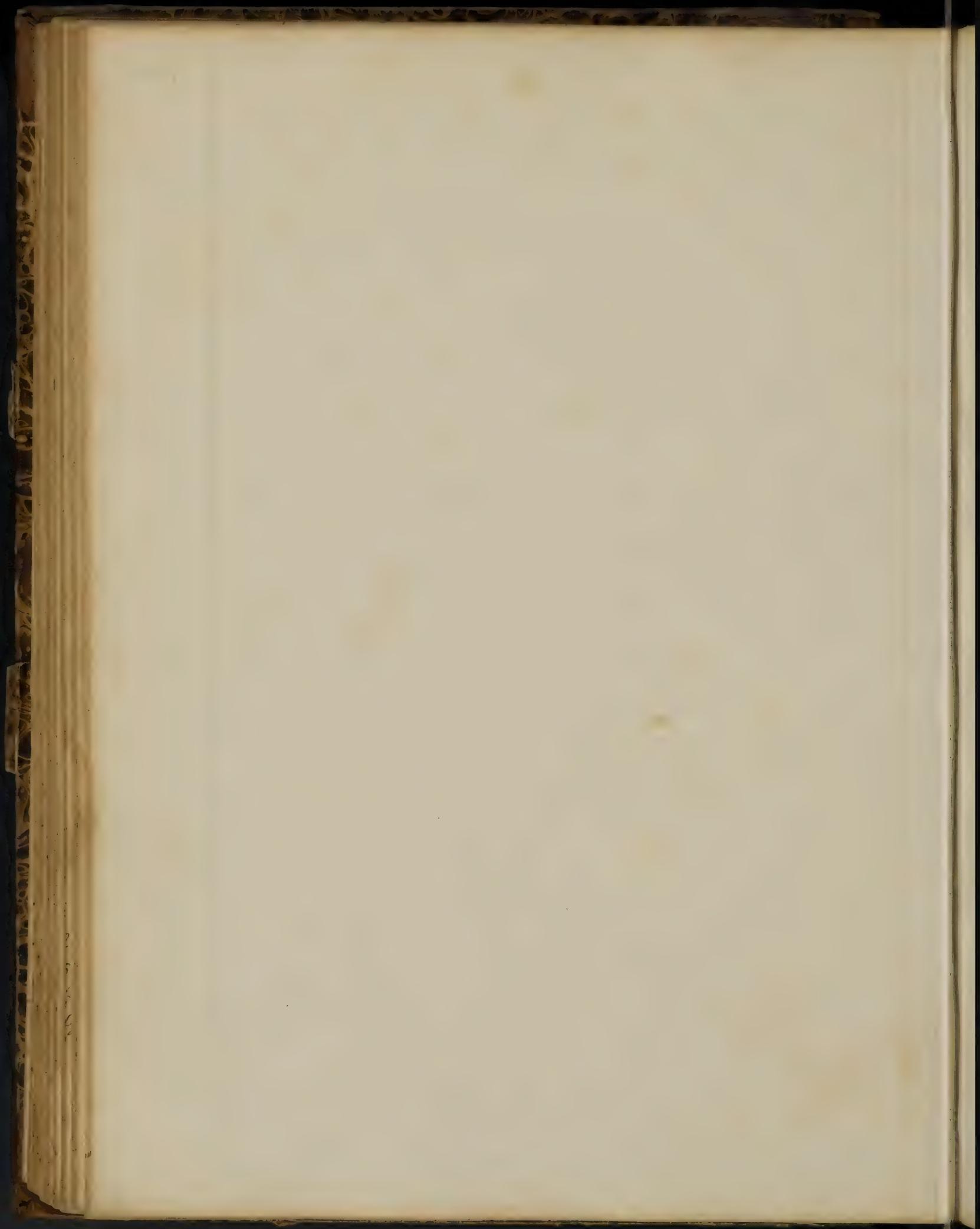
Debt will lie as^t the maker of a
provision note by the party & I think
in wh ido see - The maker engages
to pay to J.S or order the indorsee may
maintain debt on the same principle
in wh debt may be maintained on
an advertisement to pay \$100 to him
who shall catch a thief &c.

Ocklode 38. Stra 680. ChB. 5 Comt. R. 91.
Sw & 576. 2 B & P. 78. 2 Saunders 62.

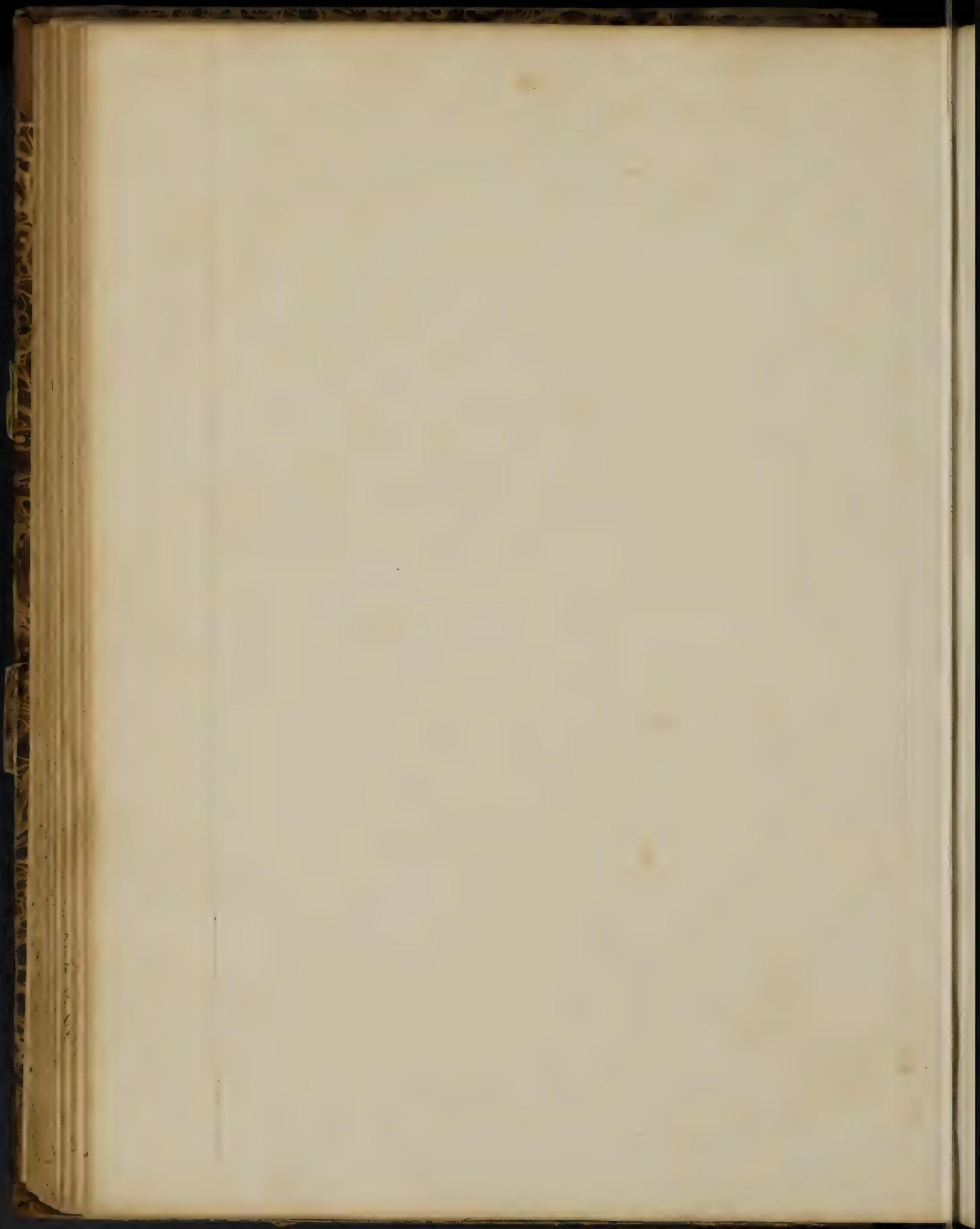
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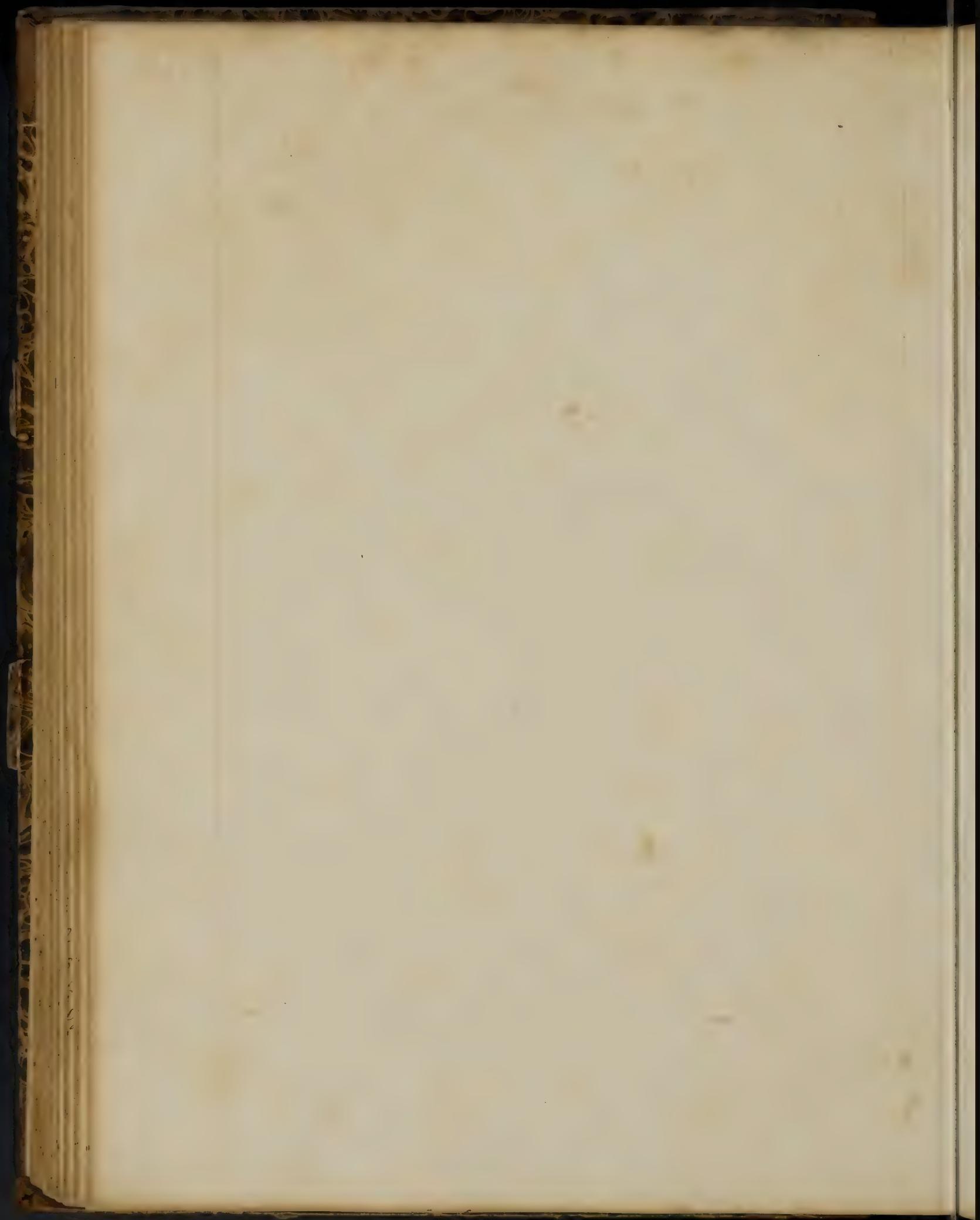
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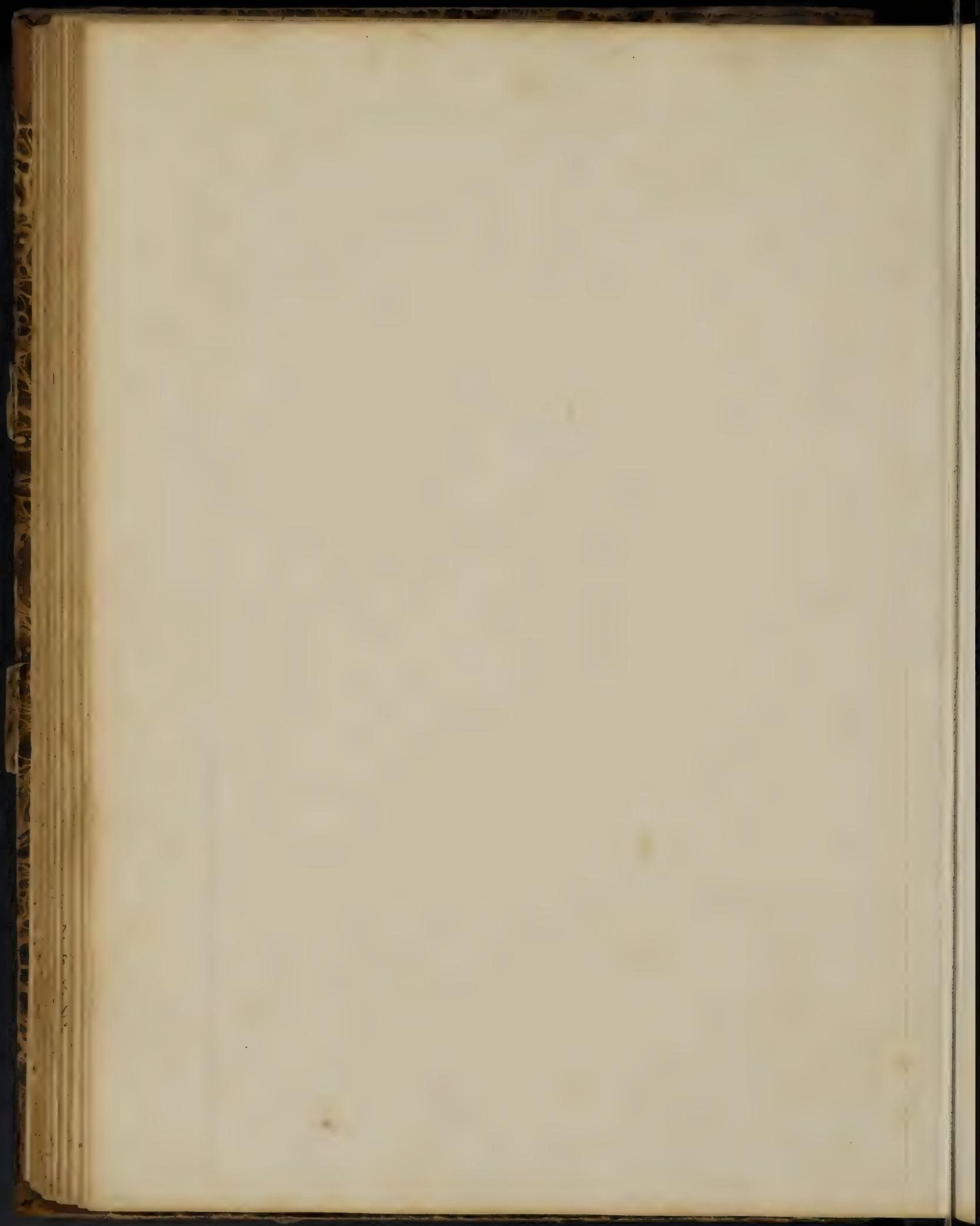
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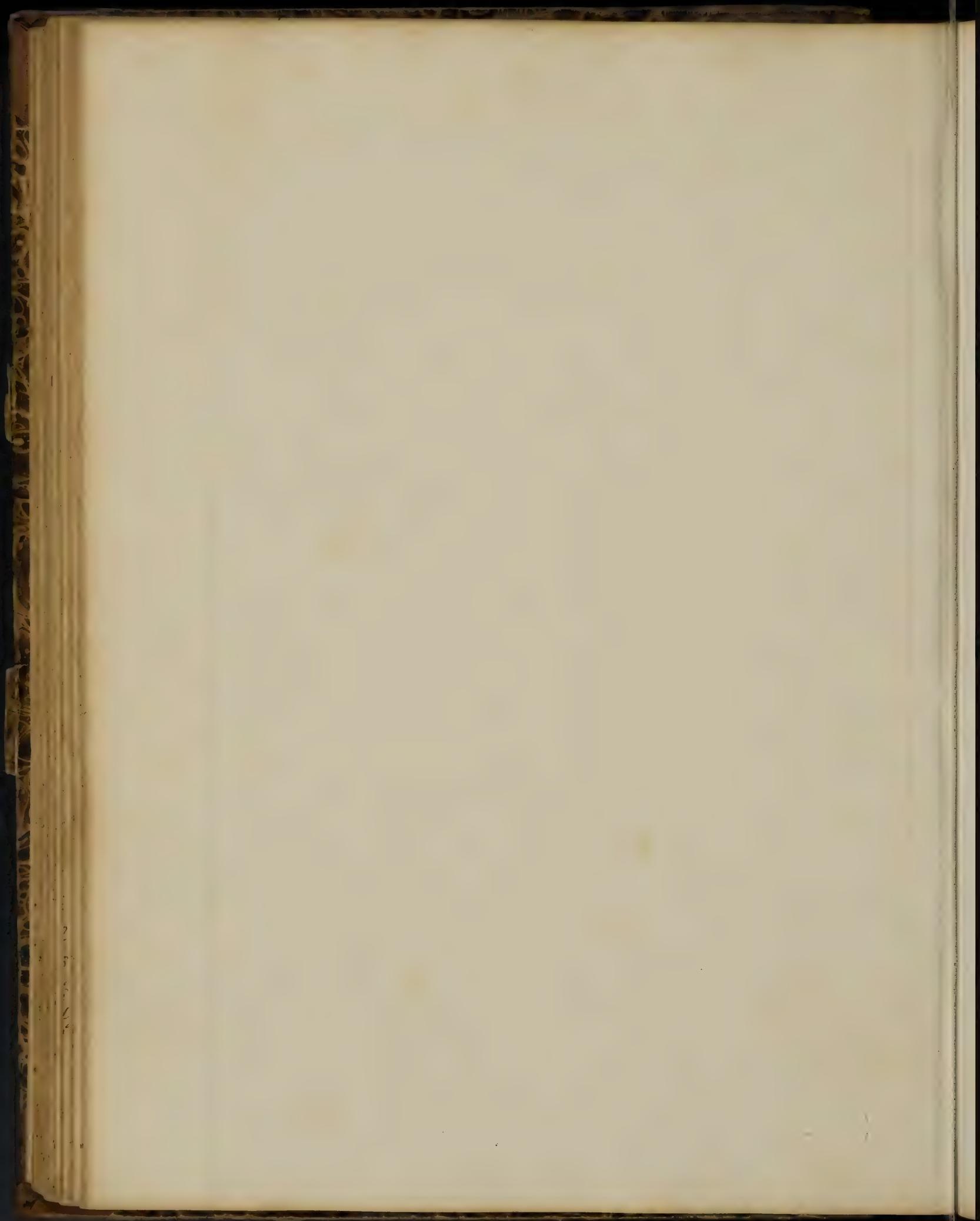
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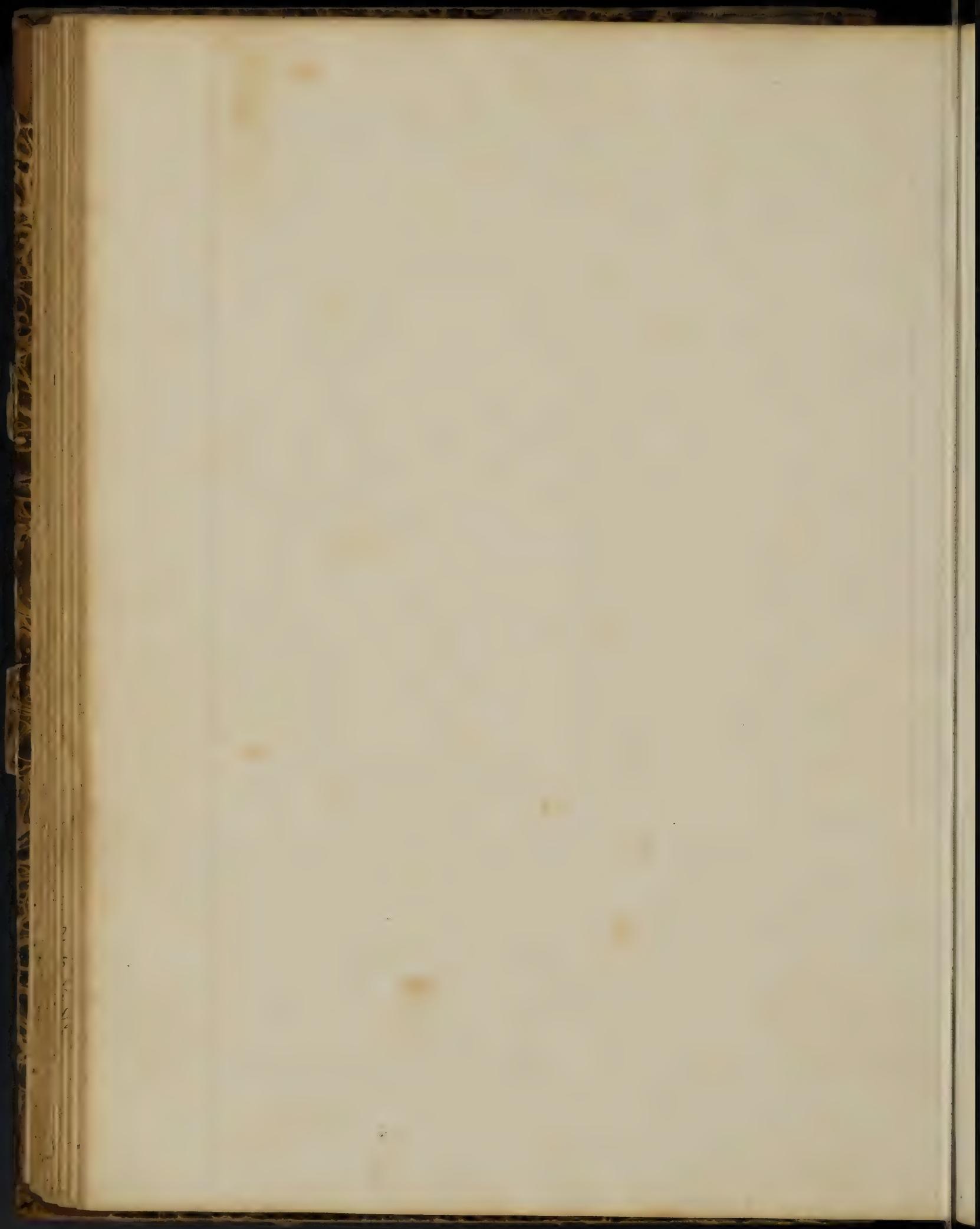
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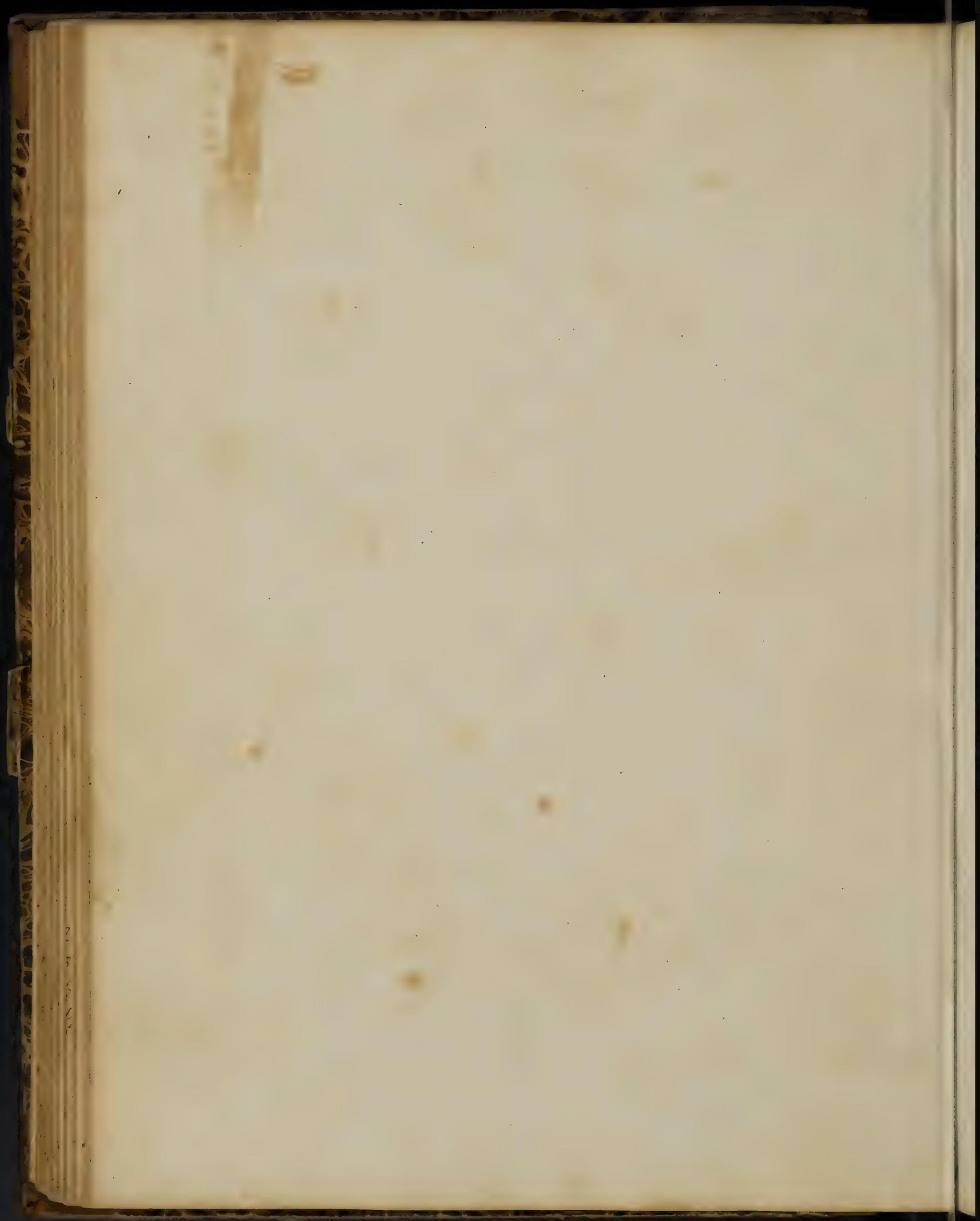
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(315)



317/



Master & Servant

of servant is one subject to the personal authority of another, & master is one who exercises this authority

Two species of servant known to the com: law
 I Apprentices. II Clerical servants. III Day
 Labourers & IV Agents of every kind. 1 Bl 427:7
 1 Woodes 464:9. Loft 1. Salk 666. Slaves are a
 species of servant unknown to the C. L. Loft /
 Neither can the local laws of any foreign
 state allowing slavery be executed in Eng^d
 Loft 1. - Co Litt 79 b (v). Salk 424. 626. or 656 666.

Vilescus are now also unknown in England,
 Loft 8. 3 & Cane 307.

On the subject of slavery in the state
 of Connecticut Root 364. 517. It appears it has been
 held that slavery was never legalized in that state

No man will not lie for a slave. An
 absolute property can exist in the person of the
 slave. See 1 Raym 1: 174. Salk 666. (3) 167:785;
 1 Sir 201. The master can have no right in
 the substance of the person of the slave. But
 a slave may be taken or exⁿ & sold. i.e. his
 perpetual services may be sold -

The action will indeed lie for taking
 away a slave but it is the same action as
 where an apprentice is taken away.
 Salk 666

Slaves Master & Servant.

The Ct in Court held that slaves might hold property even agt the master precisely like a minor child,

Our sup^t Ct held that the marriage of a slave with the consent of the master was an emancipation of the slave for a relation is contracted inconsistent with a state of slavery & thus by the consent of the master. This is the doctrine adopted in Eng^t in the case of infant 33 R 356 226 Bl 571. 3 Bac 147. This decision is in opposition to the uniform custom of the state & of other states. The marriage of a wife with a villain did not emancipate either of them - The case does not expressly say that there any consent of the master. but t.c.
Litt 187 2 Bl 43:4 If however a wife married a freeman she was emancipated during the coverture. Co Litt 123 a(n). 136 b
137 (b) Per K 314.

It has been a question whether the illegitimate child of a slave was himself a slave. in the civil law partus sequitur ventrem. Not so at C.L. in case of villains 2 Bl 43:4 Litt 5.187:8 In Eng^t the illegitimate children of slaves are free. seems in these states.

~~the servant bound for a term of years & Master & Servant
apprentices to serve the master & under trainees & instructed by him~~
 II apprentices for definiton 1786 420. One may
 be bound as an apprentice in husbandry. in trade
 & in the learned professions. By St of F^r cliz.
 The relation of master & apprentice cannot be
 contracted except by deed (& our Cts have ad-
 opted the rule of the Stat: & Mod. 182.

Lo Raym 1116. Salk 68. 3 Keb 304. 2 Vern 64. 492.

4 Day 189.) a similar Stat exists in Conn^t Tit Master & serv^t X
 And a defective contract of apprenticeship
 (cannot be construed into a hiring "for
 the year, in other words it) is, void to any
 purpose except that of making an apprenticeship
 de facto, -

8 J R 379 Gailor v Rigg Augt 1808 Conn^t

Where the contract is defective the relation of master
 & servant still exists as to third persons & while the
 parties are in the execution of the contract they have
 respecting the rights & are liable to the duties of
 Master & apprentice, but the contract being defective
 either party may at pleasure dissolve the relation

It has been held that the word apprentice
 must be used in the deed but this is
 now overruled. 3 Bac 456. 1 Burns' Justice 57. 8 J R 379
 East 533:4. All other servants may be
 retained by parole. For this is the C Law
 to all servants & no Stat has altered it.

X By our Stat Father & guardian, if minors, may bind
 them apprentices, by deed with the assent of the minor
 expressed by subscribing the indentures, males may be
 bound till 21 females till 18 years of age

Minor, over 17, having no Father or guardian may
 bind themselves apprentices, by indenture, with the
 approbation of the Select men of the town,

children of paupers may be apprenticed
out by the overseers of the poor, In Ct
we have similar Stat, &c. in the elect.
Statute made in
183.

men with the advice of the next Justice
have the power to bind out the children of
paupers to be instructed in some suitable trade &

all servants except apprentices are entitled
to wages. as the law implies a contract
to pay as much the services are worth
where there is no express contract to pay
except in case of apprentices.

1 Bl 428. 83.R 3)9.

Apprentices are regularly entitled to
no wages unless there is an express contract
to pay them so. R 3)9. The law is
that towards apprentices the master
contracts to perform many duties whch
are not contracted for in other cases.

By sect 5. An infant may bind himself
by the contract of apprenticeship. But
he is not liable on the covenant
contained in the indenture.

The only consequence is that while
the infant continues with the master the
parties acquire the rights & subjects
himself to the duties of an apprentice.

But the infant may violate the contract
by leaving his master & is not liable
1 Bl 426. Cro. C 179. 448. Doug 501. or 578. 5 T R 716.
1 Chod 190. In Conn. we have no such Stat.

But if the value of service is in the
whatsoever is to be done by his master, he
who so may find cause to be dissatisfied
with the act of the said apprentice.

of 500 or 750 pounds

It has been held in court that the following
question arising in the instant case made
in common law is not liable to the
act of the said apprentice. This suppose
that the master does not consent
sufficiently to the acts of the servant.

Main offices are not required in the case
of apprentices to enter into legal
agreements subjecting them to personal and
responsible

14708 his master the minister is a defensor
18646

It is agreed that an apprenticeship
can be discharged only by deed
or by agreement (Ed. 1. Hall 5. C. 1. & 2. section 2).
The meaning is that by a bare
written contract by deed the apprentice
cannot be discharged - where the
discharge depends upon an agreement
that agreement must be understood.

14709 till it is said that by mutual
agreement the apprenticeship may be discharged
without deed, but this can mean only
that a mutual agreement executed
may be valid without deed. For if
it determined the rule to be correct
as explained by a valid agreement
Minnill. et al. 1 say 153 5 Bo 126.
Bent. 1st ca 542 Doug 159. 10 R 93d.
1 east 619 610. 2 36 116 174.

14708 Cancelling an indenture discharge at
14708. by delivering it up to be cancelled is
14708. itself it becomes no deed by cancelling
14708. it comes to be a deed. It is destroyed
14708. at auction.

It has been stated the bankruptcy
settles the indenture of the master his
charge the apprentice. But this is not
so. Concerning the ~~case~~ ^{actions} may ~~be~~
~~the case~~ discharge the apprentice
See 1821 Act ch 169 3 Black 570

Under the Stat law of Ct any app't may
be discharged by County Ct for want
of fault of the master ~~or~~ may
punish an apprentice for violation of
duty. In Engls the Ct of sessions have
a similar power. And in U.S. the Ct
of sessions have no power except in
cases of apprentices bound out by public
authority. 1. 36426. 2. 382 180.

If an apprentice runs away the master
cannot force him to return - but he may
have his remedy on the covenant -

that the apprenticeship may not be
broken if the master is feloniously
killed or attainted.

1 R. 150. M. Decr 1553. 6. 6. 14. Stat. 1510.
Black's Eng. Law.

It is to be noted in this Statute of
Apprentices that an apprenticeship
is held to attach with the master
to the ground of the master's

own apprenticeship by deed however that
it does not transfer any right not
implied in covenant with binds the
master in favour of the apprentice,
that the apprentice shall have the
apprentice & if the apprentice do
not serve the master is liable on the
implied covenant.

And if the apprentice ever under
the apprence be seuered all the right
of the be apprentice: see also a
Setlement for 1. May 68. full 08.
Aug 09. 1 Will 90.

But the signature can in this case
maintain his action on the indenture
of apprenticeship, &c.

Further the Master is bound to keep
the apprentice under his own care & may
not send him abroad even to instruct
him unless there is an agreement to that
effect or unless the nature of the
employment requires it, & Lord 236
12 D^r 446. 26 Oct 1845.

If the master dies during the term of his estate has no right to the services of the apprenticeship & no control over him, the right is not assignable. See 77.

1 Stark 68. At a 1267. So Raym 683. he
contract then to teach & serve. To
young & perfect & obey. are fiduciary.
It has been held that the Ex'r
is bound to teach or procure to be
taught but they is denies. 1 Lev 177
1 Sid 210 S.C. - 2 the 1267. Winton. P. 19.
Stark 60.

of the best of people kept up a
strife in London to furnish supplies
during the time according to the
weight of authority when the
master's contract is absolute, the
man is bound, that part of the
contract is not fiduciary shall be
held good as if he had no right at all. This
is a rule which has been disputed. The
consent of furnishing the necessities
is the voice but the master are
discharged. Because the rule is on
principle correct. The master might
have made provision in the charter
It is analogous to the agreement
to pay rent where the house is
destroyed by fire &c.

If however a premium is given to the master who agrees that the boy must furnish reparation or pay back a proportional part of the premium & the English Ct of Chancery when the master dies ~~says~~ has decided that a greater part of the premium shall be retained than was stipulated in the indenture. This is going very far in making a new contract.

18th Nov 400. 1-4th 149.

It is where a master having made an apprentice over for diff. reasons has been compelled to restore a part of the premium. (Kirkstall 149).
3 Dec 150.

Also in Eng. where Ct of Sessions etc. will give the same power where they discharge him as an apprentice, sed pro wh. he did they say \$6. 15. require that power. 11640. last 67. 400

In Eng. there never existed such a power

Whatever an apprentice can be has
before leaving the town belongs to
the master & the master other effects
comes at with or without the consent of master
therefore he is right in Med 415
works 1741 B said the master
may sue in his own name. If the same
labor be held of apprentices de facto &
when of an app't de facto is while it contains
peculiar like one de jure.

the specific chattel owned by the
apprentice belongs to the master (ib)

(conue) (conue) (conue) (conue) (conue)
(conue) (conue) (conue) (conue) (conue)
the master & the apprentice have
not for many years past been
and may now justly call on the
master to pay him the wages that
the master shall have at the time
employed any servant & neither shall the
servant be liable for 2d or 3d day of wages
as he is a Journeyman & a servant within
the rule (Med 469/ut)

for taking away a servant with force in
action of trespass per quod will be Nov 10.
Id Raym 1117 Ld CR 360. 22 R 167. Id Raym 10.12
In comp' the claim is for enticing &
in trespass in st arms & the action is
supported — This must have been a ~~prosight~~
trespass was not a proper action. Comp 05.
(1 Littell Entitie 72)

By the law of Engl^a apprentices gain a
settlement in the place where he served the
last forty days. Not so in Count^t ellings^t in
it cannot gain a settlement by commandancy

II. annual servants.

When one is retained for a period not limited the hiring is for a year, 1 Bl 425 fol 186 3 Bac 346.
This rule was never adopted in CT at least practically. We have had no decision.

But there are causes for which the master may dismiss the servant 1 Bl 425 fol 186

To day labourers

There are no rules very peculiar to this class except such as are introduced by Stat in Englt.

Day labourers may be retained by hand & may be employed for any period of time —

To Agents,

+ the sum in relation to
which act may be subject to inquiry of
another 1 Bl 427; 1 Wood, 469. June 252
197. The principal has not the
same full control over his agent
as over other servants they are not
subject to the personal control. They
are bound to act for their employer
according to their contract. —

They ought strictly to pursue their
commission; for their own sake
1 Wood, 469. Commissary not much¹⁸,
a factor is a firm's commercial
agent. A Broker is an agent residing
at the same country with his principal,

a Factor has a ~~com~~ ^{com} com. on the
goods of his principal in his hands
for a small balance due to the
Factor on their accounts as Factor
of principal.

But by summarizing the goods, reluctantly to the principal the bin is gone forever

Gambel 204. 17 Mar. 49. 3rd R. 1154. 1644.
2335. Lsp dis. 108. 584. 26st 229. 523.

inches in width by good, and I think,
it is probably a small, which it shows
a particularly fine grain, in the bottom,
on this we had no litter. The old drift
deposit laid out a fashion.
652 258.82. May. 198. Obs. 21208.

It is also to be seen how upon a
series of immense difficulties
self-for-fid example. And in the
end of it all, he was never t.
Mar. 1st. 1811. Age. 49.

He has it in his power to do this
and from his position the fact of a
punishment is certain, and he may
compel the payment in a hasty fit
of rage or even demand to pay him
without giving him a hearing.

and he had a time when he had no hair in his head. He spent all the day going to church, as I said, and it would be a good idea to go to the
committee on the government of the
other world for an committee
and get them to give him back
his hair again. And he did.

There can be no loss until the goods
actually have come to the actual possessor of the
goods & that the buyer can be treated by
the law as if by actual delivery.

If the agent gives more or purchases less
than directed by the principal may disclaim
it. ¹⁰⁰ So if he sells at a less price than his
commission warrant. He must make the
difference good. ¹⁰¹ This rule is said to
hold in case of perishable goods. But
the last rule seems now to be qualified
¹⁰² by B4P419 if not entirely contradicted, & I think
Miller 4067 the first rule may be correct except
of course where you are at the head of
Chap 28 consequent creates a diff. case.

¹⁰⁰ If a factor sells on credit where he is
Miller 13 not authorized & a loss happens in
Miller 412 consequence the factor is liable. But
Lefebvre 10 & T419 & Miller 4067 this rule is
Chap 28 qualified where usage etc.

Under a commission the broker the
agent is, at all times liable for the 11R10
debts due to the principal for goods 3B49495
sold under the commission, 16amp444

the factor may not claim the goods of
the principal for a debt of his own \$30004.6
& the principal may sue the bailee in 7 East
times without surrendering to the bailee 1B49044
or the factor the amt due to the factor. The 1171
factor. The lien of the factor is personal & may
not be transferred. — — — — — March 18
(Pickering & Busk 15 East 38. To Ellonborough & Wheaton
to disapprove this rule)..... Derry 101

~~agent~~, who has sold the goods of M^r. B.
the principal on credit may maintain his
action in his own name to recover ^{for} ~~of~~ the
debt. ^{ordinary servants} ~~he~~ cannot do this. ^{for} The factor always
contracts in his own name. ^{Explan.}

202
12/11/11
26.1.1497

This will heads in you'll of all
commercial agents &c that in your
behalf contract in these our names, & the
underfor law merchant govern.

190611 As an auctioneer may sue in his own
name. So is a kind of Broker or
contract in his own name.

title if the principal not indebted
to the factor gives notice to an agent
purchaser to pay to him the purchase
must at his peril pay to the factor

190612 Chap 107 of 4 Ed 104

If the purchaser cannot determine
whether any thing is due to the factor
he may bring a bill in Equity agt
both to compel them to interplead,

if the principal is indebted to the agent ^{Comp 257}
factor. The latter may compel the principal
to pay to himself.

Lait 227
2 BTP 491
1 Camp 44

In all these cases where the agent may
 sue the principal may also sue, 72 R 359
 360/ma! 126 Bl 81. 1 Ch 205.

The auctioneer is never liable for
 selling goods to the highest bidder
 tho' sold for less than a sum directed
 If however he is directed not to
 set up the goods under a given sum
& sells at a less price the auctioneer
 is liable. Comp 395.

An attorney has a claim on the papers
 and judgment of his client for his fees
& may direct the adverse party to
 pay the costs to himself. But this
 right is subject to the equitable
 claims of the adverse party. Ex-
 where the adverse party has a debt
 agt his client whch he can sett off
 in Equity. The attorney cannot have
 a higher right than his client.

126 Bl 24. 122. 217. 657. 226 Bl 440. 587
 Doug 100. 238. 2 Bl R 526. 4. 12 123. 6. 20 361.
 456. 228/ma. 571. 1 Lait 464.

Master &

Servant. This lies in favour of an attorney does
not hold in favour of a counsellor or
there is no lieu for counsel fees where
both characters are united in one
person.

agent who executes a instrument in the name
of his principal binds the principal only & one
another who executes an instrument for another who
executes it in the name of the principal.

2 R 177

1 R 111.

St. 45.

7 R 201 An agent cannot bind his principal by the agt:
4 R 313 if he does within his authority to do it as
1 R 1. given by deed. For a deed is an estoppel
Connyngham & no one can subject himself to an estoppel
2 R 15. except by deed,

In agt: for the public contracting as such is
not liable on his covenant. 1 R 172. 674
1 East 582. 1 Root 19. There is no difference
between this & the common law of an agent
formerly contended that as the governm^t
could not be sued the agt: must be liable
(Lester's case Supreme Ct of N.Y.)

Rules applying in gen'l to all servtys.

It when master is bound by the acts of servant
those acts of the servant whch are done by the
expres or implied command of the master are in
legal contemplation the acts of the master. 11 Bl 429
256 R 442.

Whatever the servt does by the expres command
of the master or whatever the master permits
the servant to do in the exⁿ of his master's
busin^g & what the servt does within the
scope of a gen'l authority given by the
master is the act of the master. When
a contract made by the servt in the name
of the master under the authority of the
master is the contract of the master.

3 Blac 559. 2 et R 411.

If a servt is cheated of the master's
prop^y the master may maintain an
action in his own name. Cr. J 223. 3 Blac 559.
1 Roll 98.

If the servt is robbed of his master's
prop^y in the master's absence either may
have an action on the st^t of Wilton
Salk 613. 3 Nod 289. 4 Lee 303. 11 D&G. 12 & 13 54.

It has been said that the servt may sue
because he may be liable over to the master
but this is not in gen'l true. The reason
is the goods are considered as the servants
goods as ag^t all except the master, "Dalm^g"

Master & man to make over the recovery of judg^t
sent by one master to the other, the
commencement by one will ^{date} take in other
Master.

In this case too the court declares as
for the year 1660. 2d and 3d. Feb. 1669
Master. 6d. 3d. Pds. 6d

Master. But if the robbery was in the property
in the hands of the master, the master may sue for
what he took, it is deemed to be from the
hands of the master,

If the master's money is gained from
the court by an innocent master the master
may recover it back. 3. Pds. 2d

But if a serv^t has on the master's
money to one innocent of any fault,
who suppose the money belongs to the
serv^t the master cannot recover the
money. When one of two innocent etc,

If an innkeeper's servt robs a guest
the innkeeper must be liable - & so of
ordinary servt. 1 Bl 430 1 R. 2. & Co. 32. Sec. 26.

If a servt does an unlawful act by the
command of his master both are liable & both
are principals in ~~treachery~~. 1 Bl 430. 1 Will 328.
Civ Dig 580. 8.

But if a servt in the command of his
master becomes instrumental in a wrong of
whch the servt is ignorant the servt is not ~~responsible~~
liable. Ex servt keeps the Reg of doon in wh
one is falsely imprisoned.

But this rule can apply only to
cases where the servt does not whch are
in themselves essentially harmful. If the
act is in itself unlawful or if it constitutes
a forcible injury in contemplation of law
the servt is still liable civiliter at least.
2 Bl R 892.

But the servt may have his action
for indemnity agt the master where he
acts ignorantly & is subjected

Mayer Those acts of the servt whch are not done
servant or the master command express or implied,
are not deemed in law the acts of the
master. 3 Jack 282. & 2 R 53. 1 Bl 421.

If a servt while employed in the
master busness commits a wilful injury
to another the master is not liable for
it, this is not done by the command
express or implied of the master. 2 Co. 806,
not act as agent. 1 East 106. 1 Bl 4 P 472.
Salk 441. 3 R 764. 2 Co 114. 2 Bac 162:3.
11 Wood 405. Tide port

But if a servt while employed in the
service of his master & engaged in his busness
injures another by ignorance want of skill
or negligence the master is liable, every
master must at his peril employ skilful
& careful servts but he is not an insurer
of the unwise passions of servts In the
first case the servt does not act for the
master in this he does. 6 R 115. 5 2 R 648.
2 Co 186442. 1 East 166. 106 1 Bl 431. Salk 441
as Raym 734. 11 Wood 405. 1 W R 446. 1 Bl 447
3 Bac 562.

If the apprentice of a surgeon injures a patient in attempting to cure him from 2 Vol 693 ignorance or neglect. The master is liable 2 Rec 560 for this mala fact: —

This distinction as to the master's liability, between wilful and negligent wrongs committed by servants, has been but lately settled on fully understood. And the history of the modern decisions upon the subject is as follows.

I. Feb 1794, C. S. R. 125. Case first at master for his servant wilfully killing his master as the P. D. J. Held that case would not lie because he had not the proper action. And no doubt was expressed of the master's liability.

III. Oct. 1795. Reckonsd. in 2d Bl. 442. Held that of the master for servant's negligently killing his master as the P. D. J. Held that that case could not lie as the P. D. J. Held that the proper action is 2d Bl. 446. " كذلك على المدعي أن يطلب العذر".

III. Oct. 1800. Reckonsd. in 2d Bl. 106. Held that of the master for servant wilfully killing his master as the P. D. J. Held that that case could not lie as the P. D. J.

This is the established and correct rule. These decisions were all agreed with the 1st Bl. 442. And action must lie against the master, and the P. D. J. will not be faulted. And the reason is this, in the first, it is held that he had no right to the proper action, and money. In the 2d both the decision, and the 2d Bl. 106 agreed for it, were agreed.

blame the master or liable for a facile
dising & the injury is not done by his
direct command & care is the proper remedy
agst the master. The master is liable on
the ground of negligence in employing
an improper servant.

23 Oct 1842. Lavington & Rome v R 125

18634 Deputy iff an exception. Vide Schiff & Taylor.
Rt for Schiff & his Schiff & his deputy are one person
in law. & besides the return is in the name
of the Schiff (in Engⁿ)

18644 If a servt employed in the master's service
asks another servt to assist him & by the
interference of the latter, an injury is done
the master is liable. This does not appear
in this case to have been any authority given
to the first servant to hire another. But
as it is decided that the intermediate
servt is not liable.

When the wilful act of a servt violates
a violation of a contract between the 176B1654
master & the third person, the master & 3B1656
is liable on the contract tho' the act of Ed Ray &
the servt is wilful. Ex a Blacksmith's quo'
servt lame, a horse sent to be shod & does Jones 73:4
it wilfully the master is liable —

This is no exception to the genl rule
the master is not liable for the act up
for a wrong but he is merely liable on
his contract.

The Postmaster is not liable for the
wilful or negligent acts of his under
Post masters. Ed Ray m 646. Earth 487. Contra
R 100. Comp 7:4. 764. Salk 17. Esp C 624.

He ought not to be liable more
than the Plaintiff & cuate for the negligence
of the Post master genl

But the Post master is liable for his own 3 Wil 443
negligence,

Comp 765
2 Bl Ryob
Esp Q 613

Master The master is bound by the contract
and if the agent makes in his behalf
or made within the scope of the
agent's authority

Stevens 43. 443 Com 6 450 Llyd 234
12 R 531 3 26757. 1736 457 Wallod 398

not general authority given by a
merchandise contract or to any
number of specific contracts but
which extends to all of a particular
kind or to all of some kind
either of these may be implied. either
may be implied from the master's usual
or present practice. — If the master
stands by & bears the agent make a
contract in his name a special authority
contract is implied.

1836 43a. 1 April 1862

Where the master has usually
extorted the agent to purchase
him but has always furnished him
with money the master is not bound
if he does not with express authority
take up goods on credit. & call 234
for money at Contee?

If the master has usually or frequently
permitted the serv^t to take up good, 1636430
on credit he gives the serv^t a credit
with the person with whom he & as the
case may be with the public,

And if the master has once for a debt 1636430
contracted by the serv^t witht authority,
right, expressing disapprobation, This gives
the serv^t authority to purchase good of
the person to whom he until the master
expressly forbids.

And if a serv^t witht any authority
purchases good which go to the master, 3162234
use the master is liable to pay for 1636430
the good. 26e by using the good. 316225
gives an agent subteqt. 316226.

that suppose a master sends money
to a servt to whom no credit has
been given & the servt embezzled the
money & procures the goods on credit
& the goods comes to the master's use
the books leave the question doubtful
2 Ray 224. Raith 234. 32 R 760. 10 Cllck 110
3 Kel 625. But I think the master
is not liable. The use of the goods
in this case does not amount to an
implied agent to a thing the existence
of whch he did not know — Peake R 48.
2 Esp R 214. 1 Conyng 221.

2 Esp 70. But where a servt has made a
commercial purchase on the master's credit with the
master's authority, & the master afterwards
sends money by the servt whch is embezzled
the master must bear the loss. A debt
was here clearly due before the money was
sent & then the case is as if the master
had contracted the debt himself & sent to
it safely.

But when the master has given a credit to his servt he may terminate it by a notice to the person & where the credit is particular & by a public notice where the credit is public. But a notice to the servt alone is not suff. Whether is the credit determined by a private dismissal of the servt until the dismissal is known the credit continues - this is all case where the servt has a credit the master cannot discharge himself except by a notice as public as the credit
 33 R 760:1. 30 Mod 109. 12 Q 346. Ch B 26:7.
 Peake R 42. 154.

If a servt in selling the master's goods by the master's authority warrant. like 43 R 177 master is liable unless he expressly forbids 3 D 757 him to warrant if this is done the master is not liable unless the servt has full 653 authority to warrant. 1 alk 289 10 Octos 109 Exh Q 650. Ciph III.

But when a servt acts within the ~~genl~~ scope of a genl authority an express prohibition to warrant if not made known to the purchaser is not suff ex gr. a servt in a inn or stable has been in the habit of selling & warranting 32 R 760:1. 10 Mod 109. -

the distinction between a genl &
a special authority applies to all
cases of contracts made by servt.

There are two cases in opposition
as it seems to this principle wh.
I think are wrong, or that there
is some defect in the report.

1. 1 Reg. N.Y. 143. 3 Bac. & Co. Ch. 69.
2 R. 12. 20.

It has been said that if the name
of an unbound horse under his hand be
left him at a fair, indicating the
servt to conceal the defect the master
is not liable 1 Reg. N.Y. 143. 3 Bac.
600. 2 80 595. unless the servt was directed
to sell to a particular person. But they
seem to be wrong.

If then a servt in a store, or Clerk he
wants to the master is liable. There is a
genl authority to sell & this includes to all
acc. 1 Reg. N.Y. 143. 3 & R. 757. 4 & R. 171
3 Bac. & Co. & I think that a private
authority not to warrant in this case is
not suff to except the master. (Every stalle
kears unto)

When the master is bound the servt in Relyt
genl is not bound. unlesp he expressly binds himself. 2Bac563

But if the contract does not bind the Skewry
master as where the servt has not authority
the servt is bound.

But the action if not for fraud
must be I g think on the implied contract,
not on the express contract for this day
not sufficient to bind him,

His wife child relative friend or
neighbour acting under or genl or
special authority is his servt quoad hoc
1 Bl 430.

A master in guilt is not bound for
16ph/34 expenses incurred by his slave's sickness
16ph/34 with regard to apprentices the
16ph/34 usage is diff'rently however because
16ph/34 the usual indenture contains a
16ph/34 clause to provide in sickness & in
16ph/34 health. & this rule does not apply
16ph/34 to slaves.

how far isn't master liable &c &c.

The acts done with the master which a
implies command the servt alone in service
liable. The acts done in fault to his master
in whch the acts of the servt are done not
in the exⁿ of the masters business 1732 431.
3 Bac 562. 1 East 111. Cro 275. Conf 406. Esp 603.

In other cases stranger injured by the
act of a servant may have their remedy
either ag^t the master or servt. It is a
genl rule that if a servt employed in
the masters business does an injury thro'
negligence want of skill &c the servt is
liable to the party injured. for he has
a right to consider the servt as the
author of the injury & had not regard thereto
into the domestic relation of the servt 1 Mil 218
C 2 R 411
15 May
Ra. m 220
Esp 658 03

But the servt is not always liable
for these accidental injuries if the
injury is matter of contemplation between
the master & the stranger the master only
is liable. Ex a Blacksmith's servt injures
a horse in shoeing him similar servt be
Conf 46. Esp 658. 1732 431.

The injury done is in contemplation
of law merely a breach of the implied
contract between the master & stranger

But the case of a ship master is an exception to this last rule, i.e. the ship master is liable for an injury which is a mere break of contract between owner & freighter. *Salk* 440. *Carth* 58. *1 Ventr* 190. 238. *Raym* 220. 6. 12. 125. Conscience Susceptibility requires this rule, more frequently, distant. The Bill of Lading is signed by the master & thus he becomes party to the contract of bailment.

part of And if a servt commits a wilful tort the servt is in all cases liable his wilful act is not in performance of the contract & if the master himself should do the same thing the injured party might rescind the contract from that time.

If an agent of Government receives too ~~compl~~
 much credit up will not lie ag^t the agent
 But if money is extorted by an Officer
 he w^t be liable for the ext^t in indebt^t.
 Corp 112. Circumstances the same as in the
 case of common master & servt.

If the atty for a ship after a ~~nonsuit~~
 clandestinely enters a suit for the ship the
 atty is liable for the injury. Corp 618. 16 Oct 11
 The act is wilful, May 209 Dec 595. \$2000.

A servant is liable to his master for all Moderate
 neglect & for all wilful wrongs of the servt 3 March 64
 for wh^t he has been subjected to by wh^t
 he is directly injured.

If the servt lands his master's goods Corp 265
 before the master see p^t & the goods are collected 10 March 11
 confiscated 3 March 65

But for a bare breach of the master's
 orders wh^t occasions no injury. No action
 lies but if the servt is negligent - the
 master may chastise. 14 1 Sid 298. 2 Dec 564
 1 Apr 118. 1 Feb 88 2 Will 325 41 Pan 2000.
 Corp 267

it must in guilt undertaken only
for diligence & fidelity. in that is all
which the law in guilt implies. it does
not in guilt imply a contract for
strength & skill. & he is in guilt then
liable for such costs only as are occasioned
by want of diligence & fidelity.

Decided by Mr. & Mrs. 1864. 171 Parliament

one is liable only to the master where
the master has been subjected to damage
for the misconduct etc. This supposes
that the master was not party to
the wrong by assisting commanding. 3
S.R. 1864. 26. 1864. 26. 1083, 1084, 1085.

Between it among them the law enforces
no contribution. Hard 1864. & S.R. 1864.

Master's authority over
the Books say in very year being that the
master may unreasonably chastise the servant. Kidg 167.
for disobedience to. 1736428.

This rule does not apply to all 2 Feb 179
servt. (cont.) Went 170

The chastisement must be reasonable 170a/b/c
or the master will be liable for the except 11.130.
2 Feb 167
1 Feb 120

When children are sent within this rule
where rules apply to Slaves. apprentices, 1736428.
& in a qualified sense to day labourer, Fitz 168.
But agents cannot be within the rule

Indeed the rule can extend only
to those servt whl belong as servt
to the master's family. to those who
are under the domestic government of
the master. Minor mercant servt
may be corrected but a day labourer
of full age cannot be corrected. if
he is corrected he is entitled to his
discharge by the practice authy.

The mere right of correction cannot
justify a master. 2 Feb 167. 8 Feb 120.
218. 330. --- 3 Mar 366.7.

This right of correction is personal
to each & cannot be delegated: The master
2 Mod 10th may send the servt to school & the
Laymon school master may correct but the
310 pedagogie does not act under a
charge of delegation authority from the master
Aug 18th

Book III, If a master in correcting a servt by
striking any man kill him he is guilty of
62. of treasonable homicide or manslaughter
healing or of murder as the case may be,
5 Mod 18th for distinction vide law of homicide
16ab 454

The cutting away a serv^t is only a civil tort & injury. But a Stat. of Court has made Ray 116, it a crime subject to the penalty of \$100. Com. 66.

6 Mod. 182.

Wood 469,

Wal. 191.

3 Bac. 565.

If a serv^t is beaten by a stranger & the master loses the service he may maintain an action with a per quod, but this does not oust the serv^t of his action for the immediate injury. 9 Co 113 10 Co 131. 2 Pult 191. 1 Sid 175. The master must alledge the loss of service as of 618. 2 Rol. 112. 3 Bac. 568.

Within this no minor children are serv^ts & children of age may be. On this principle depends also the action for beatation.

If a stranger beats another serv^t so that he dies the master has at all no remedy the civil offence is merged in the crime. See 19. 90 Raym. 339. 2 Rol. 112. 3 Bac. 568. This rule does not hold in case of slaves in this country & perhaps not at all in this country,

is a dangerous instrument when used, but
Master or man has the action per quod.
R. 109. If the court are ignorant of the
Master's negligence &c of the cargo on board & principally
the Master has done some wrong. L. Haym 214
21 M. 359. Last 348. Ep. 60. R. 109. But then
it would be good in the subject in the
books.

38 M. 1045 In case of attachment if the master has
(1820. 38). secured full satisfaction of the court the
attachee may proceed thence in law only one
satisfaction can be had.

The master may abist the servt in mainty
his wifte. 2 Rot 115. 1736 42q.

A servt may justify an apt^t in defence
of his master 2 Rot 407. 2 Rot 406. 1736 42q.
3 Bac 568. But he cannot justify an
apt^t in defence of his master's wife or child,
the right grows out of the relation
of master & servt. the wife as such is
not mischief.

Servt cannot justify an apt^t in defence
of his master's goods, unles they are in
his keeping. See 3 Bac 568.

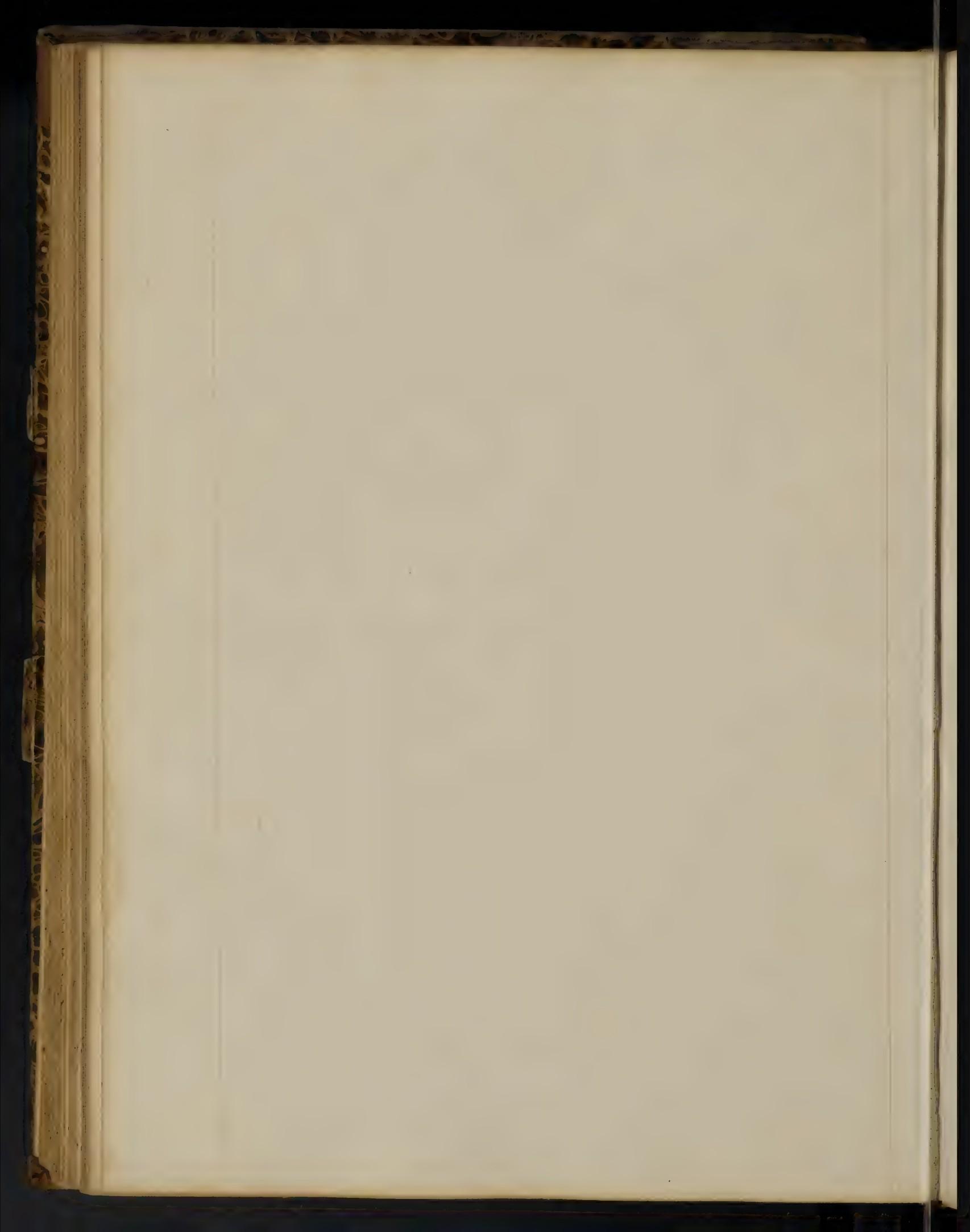
A master may justify an apt^t 3 B 568 in 3 Bac 568
favour of his servt the authorities are like
dicted. principle in favour of the 2 Rot 407
rule as has expressed. It is b^t the 1736 42q
master may have an action - But this claim may
not be said of every right he has -

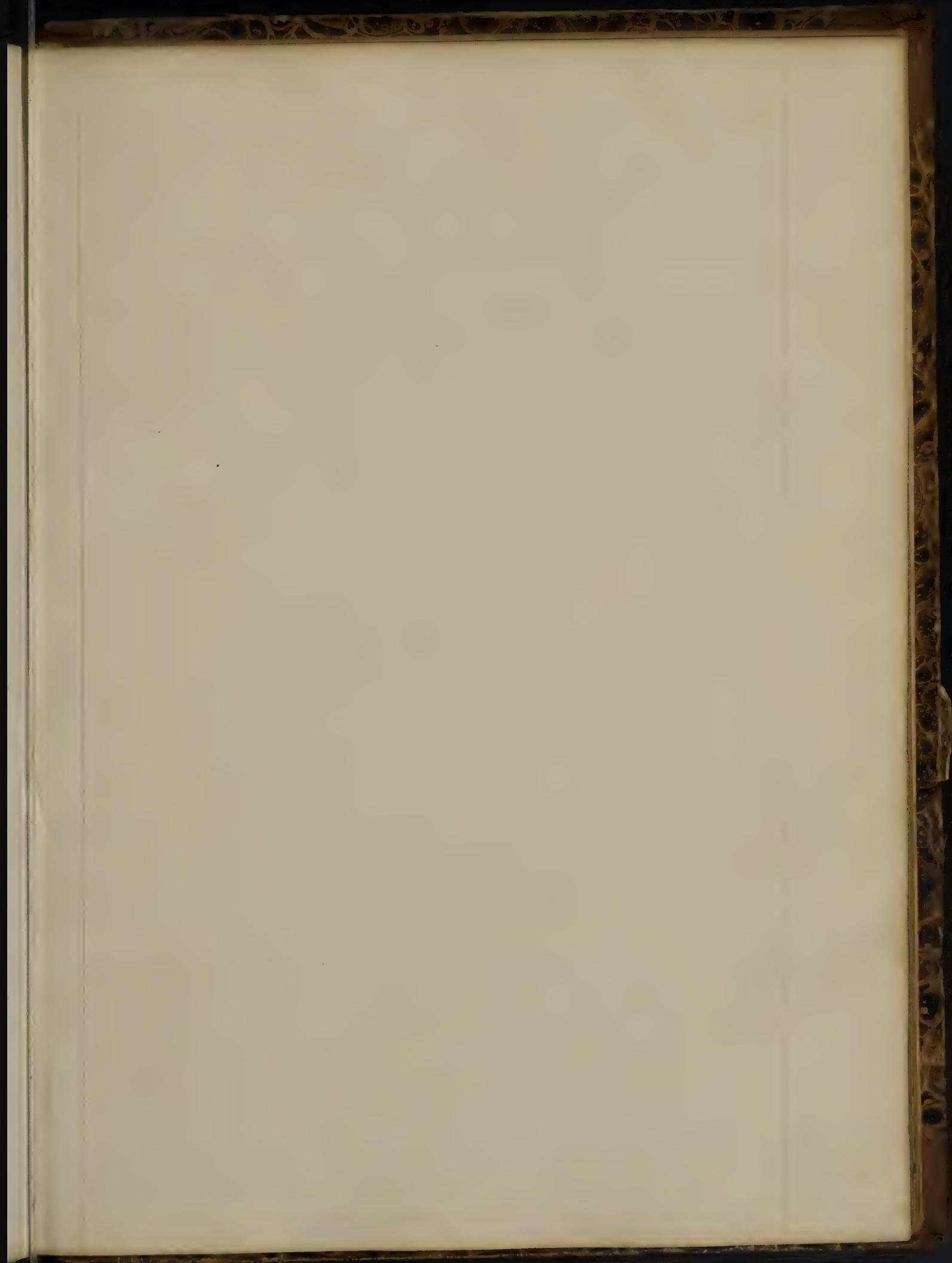
This rule extends only to those servts who
are part of the master's family & under
his domestic government.

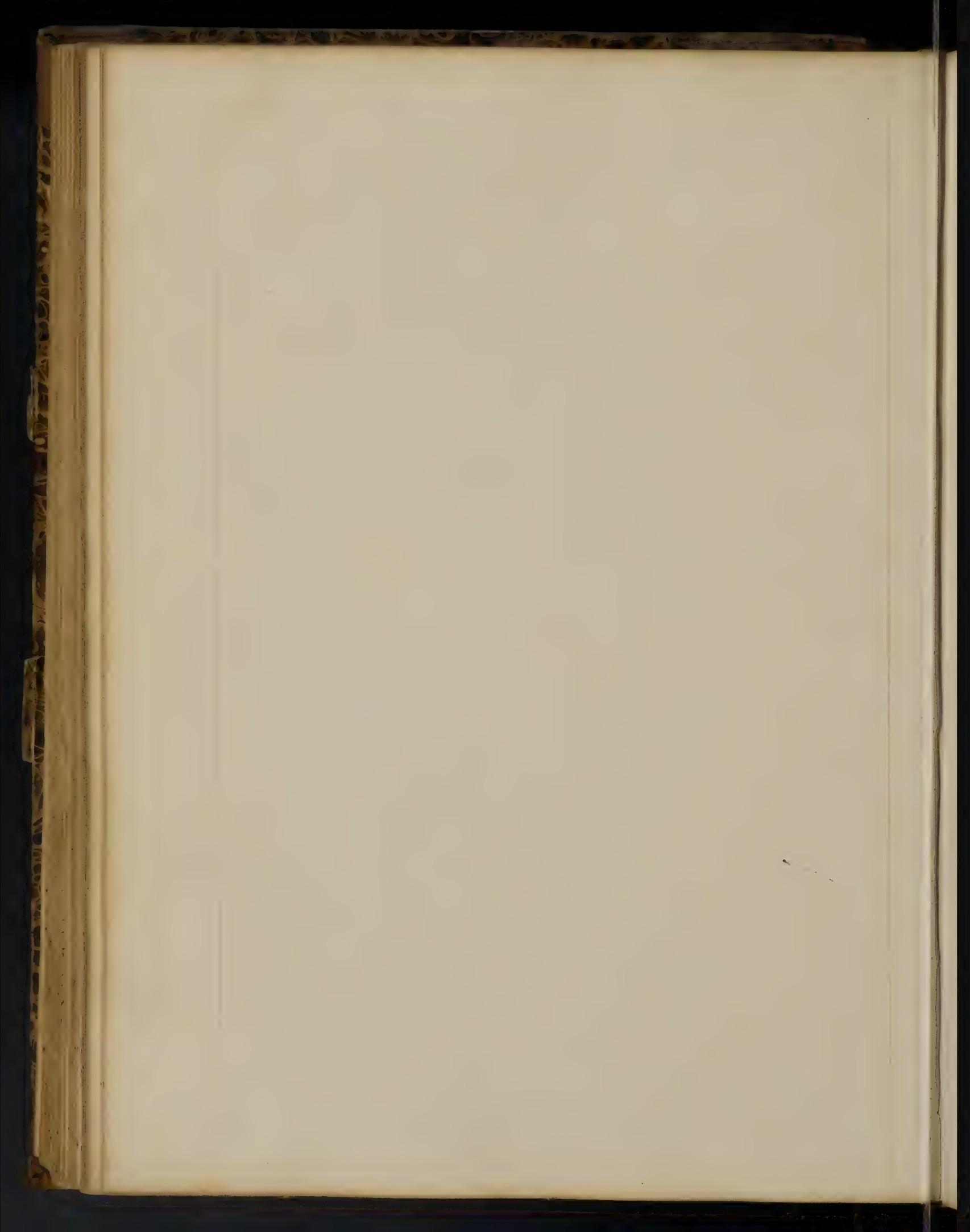
in Court cannot avoid a deed made
under duress of the master the relation
between is not suff'ly intimate — In the matter
is confused & the servt gives his ass't to
release him.

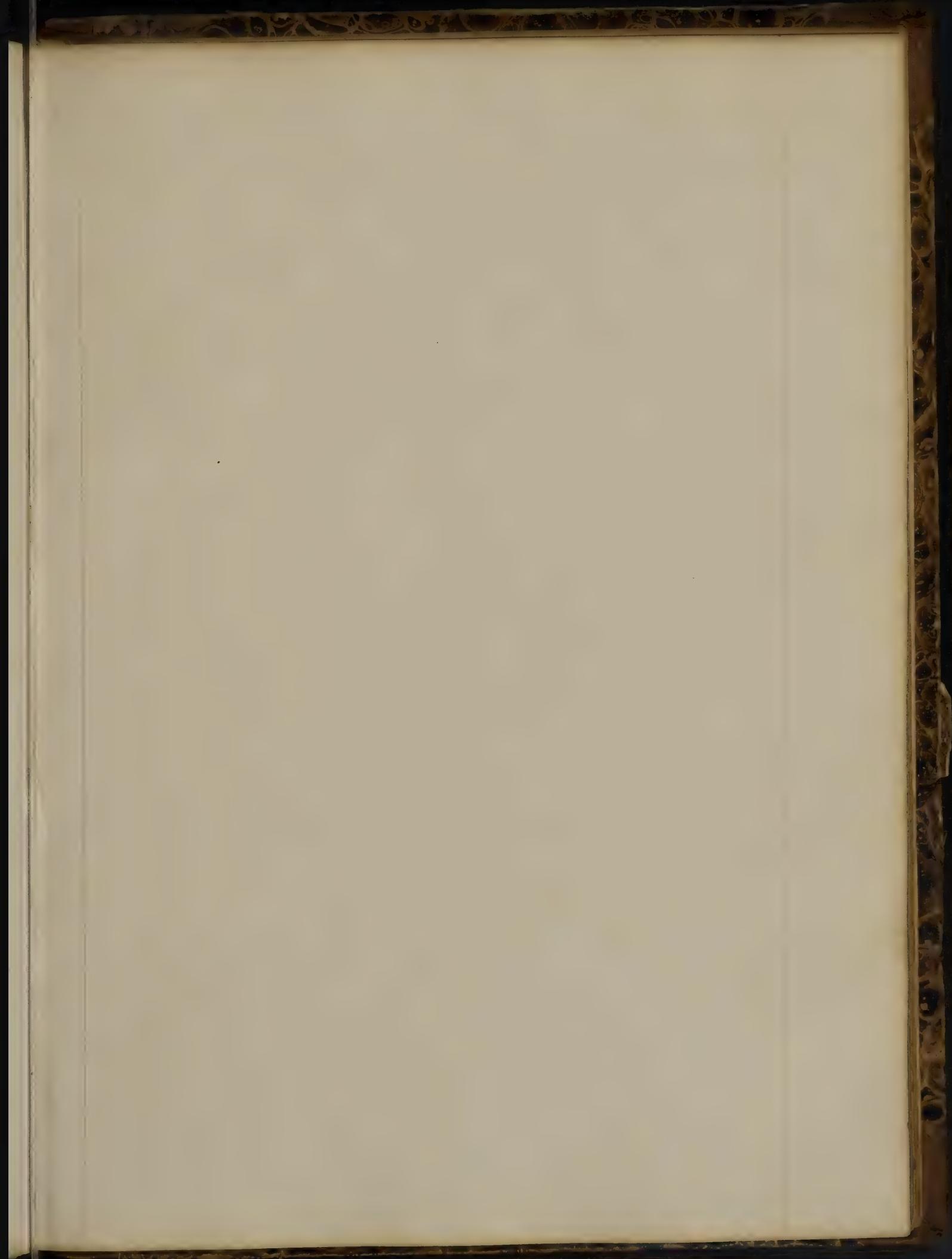
But in Equity the deed might
be examined as obtained by apprehension
by unfair advantage of the master's
situation amounting to fraud.

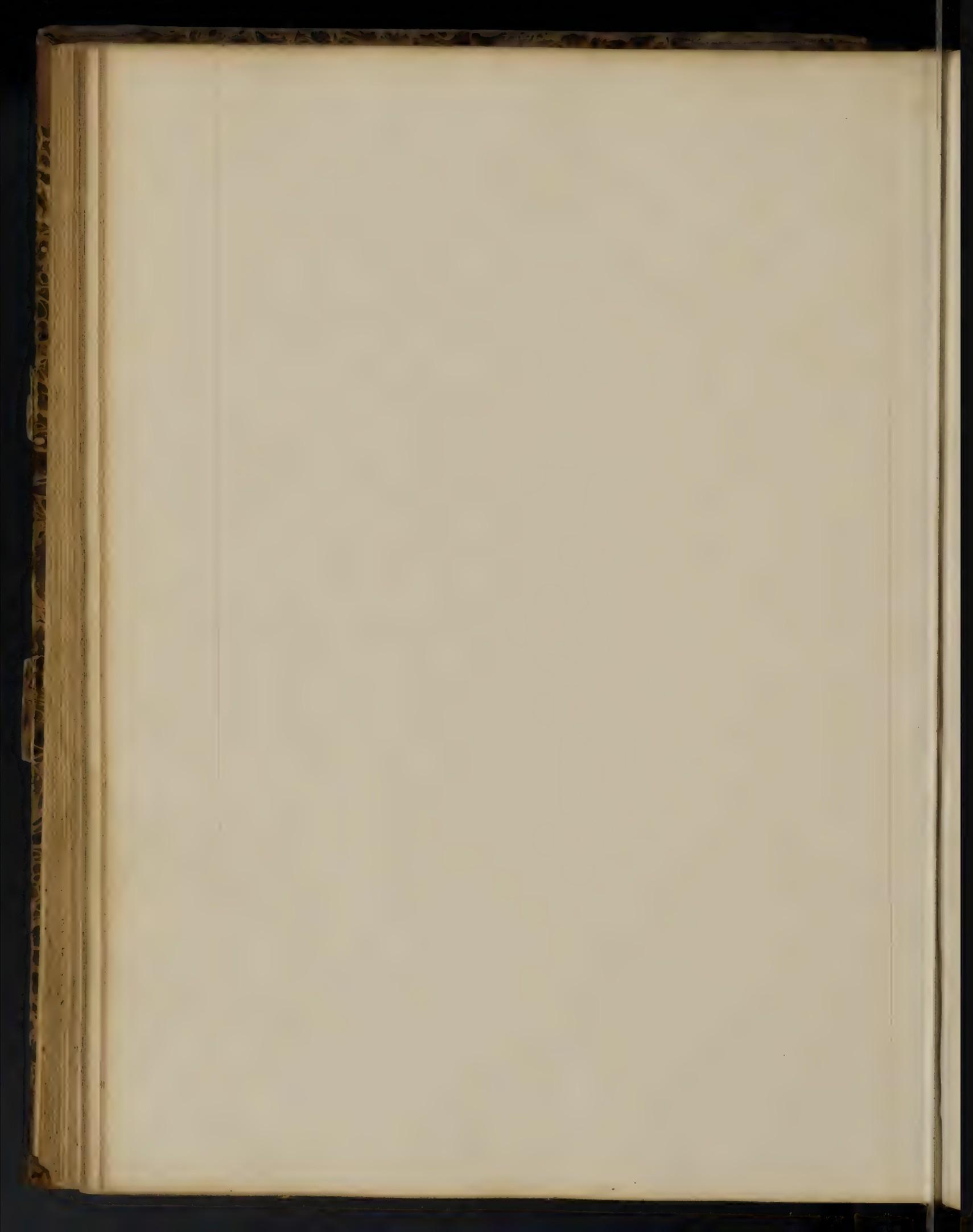
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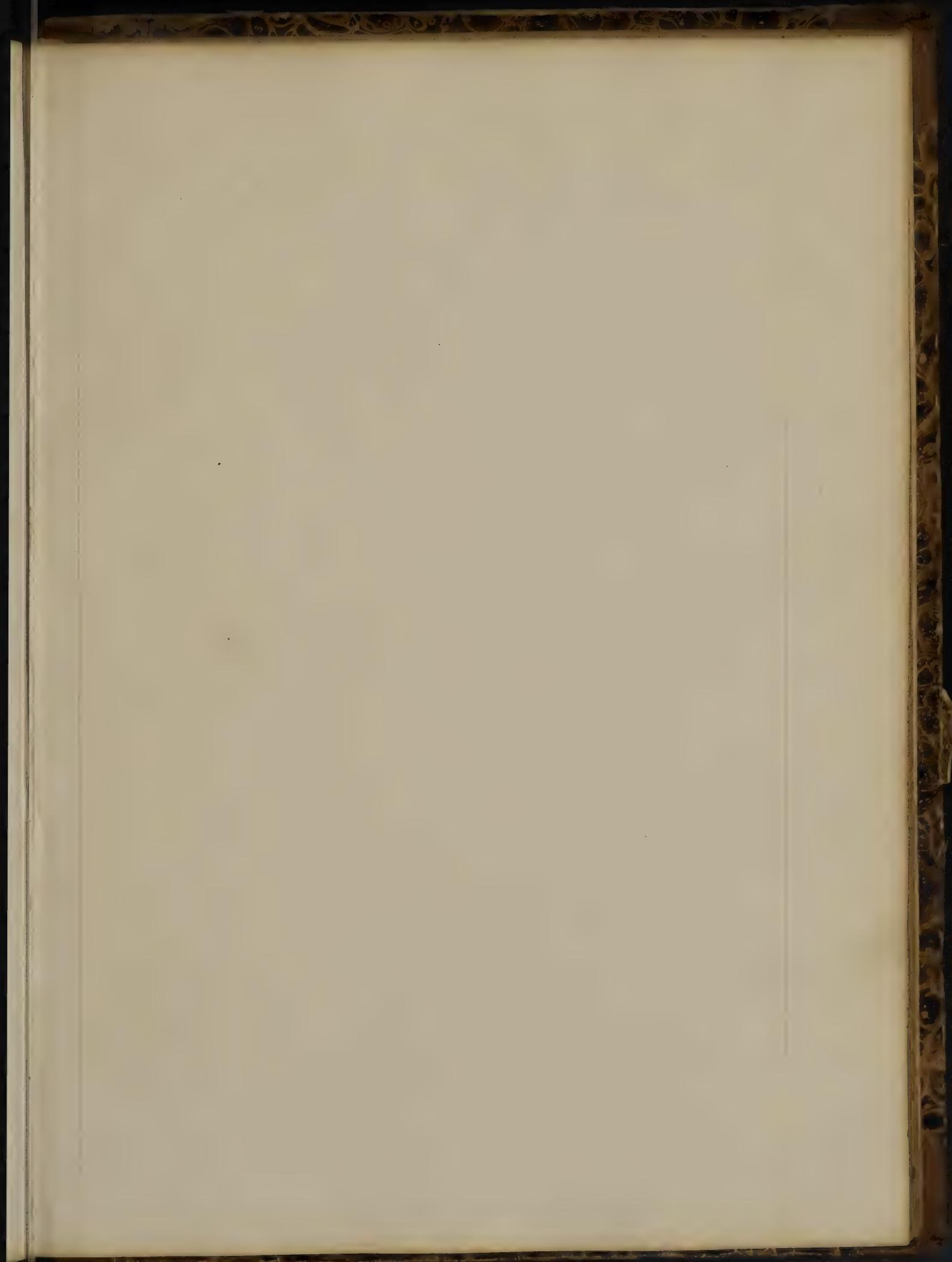


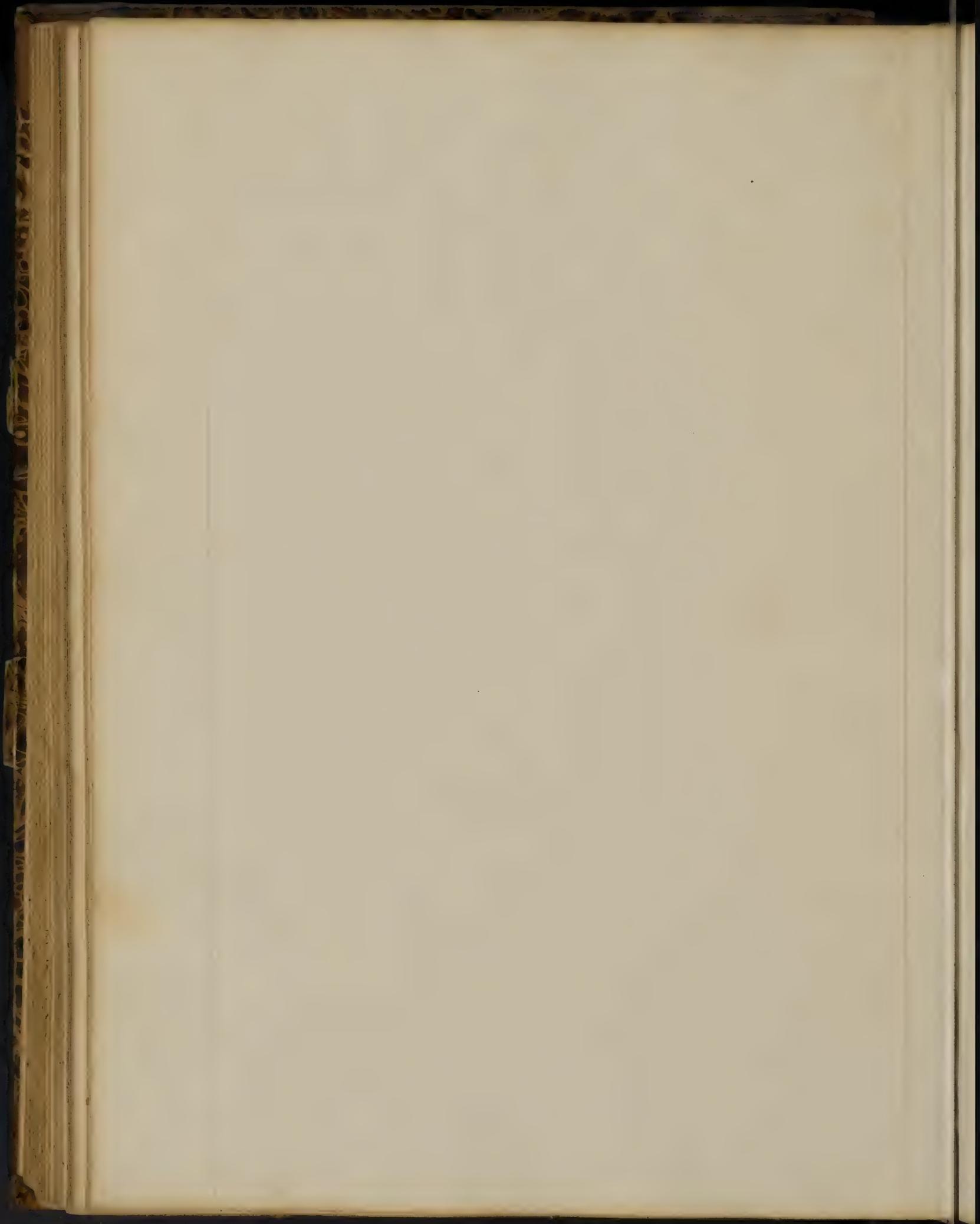


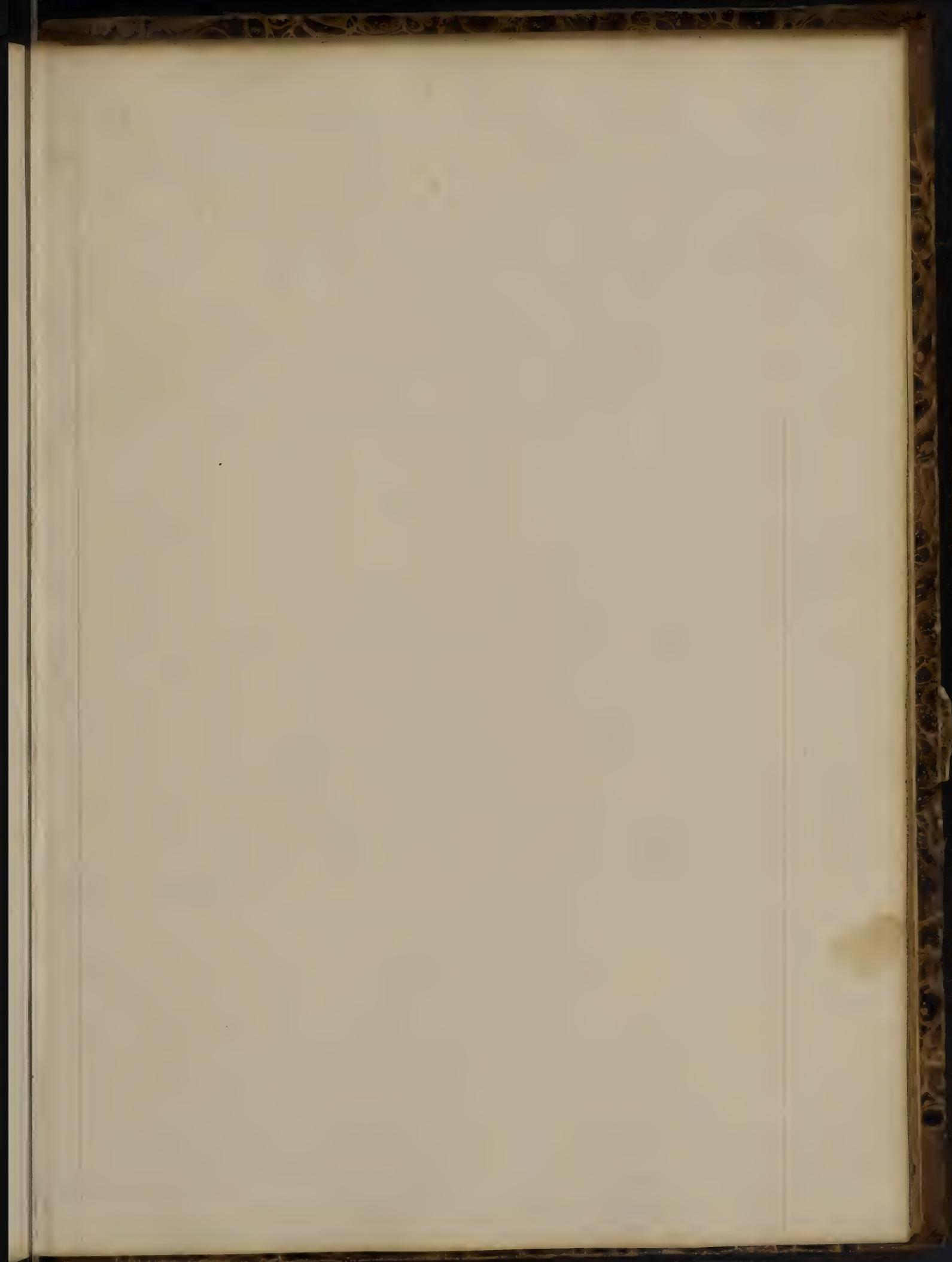


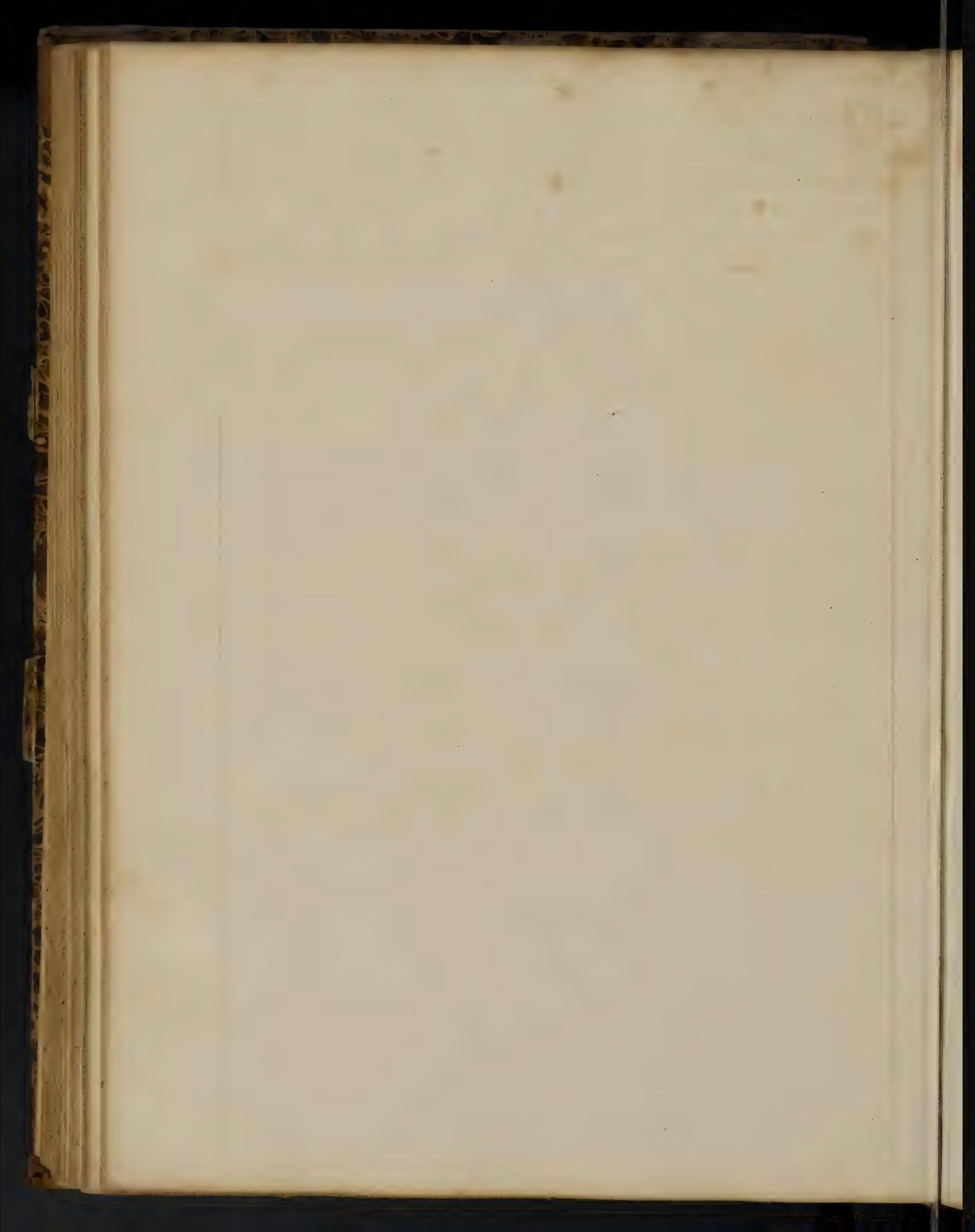












Partnership

The word partnership denotes the relation which exists between persons who by mutual contract have united their money good, labour & skill or some or all of them in some lawful business with an agreement to divide the profits & bear the losses of that business proportionably.

It seems to be of the essence of the contract of partnership that the partners should have a common interest in the stock of the company and be jointly concerned in profit or loss.

II How is the relation of partners created.

Persons may be liable to other, as partners where no partnership in fact exists as between themselves.

Thus, if I suffer another to hold me out to the world as, in company with him suffer him to use my name &c I become liable as partner with him whom & thus permit to use my name to all who give credit to the company.

So if a partner after retiring from a partnership permits his name still to be used in the business of the company

So if a person partakes of the profits of a business
he is answerable to creditors as a partner in that
business, he takes from the creditors a portion of
the fund to which they look for the payment of
their debts.

The late can, however admit an exception
to this rule, the exception Lord Ellen said was too
refined & subtle for his understanding. It is this,
that if an agent for instance is to receive as a
compensation for his services, a sum equal to one
fourth for instance of the profit, or a business, which
sum the agent receives as payment for services, & not
a profit in the character of profit, then the agent
is not liable as partner to those persons.

Persons become partners as between themselves, when by mutual contract they unite their money &c in business with an agreement to divide &c.

a contract that an agent broker etc shall receive part of the profits of a business for his trouble will not of course create the relation of partners as between the parties to the contract tho' the receipt of the profits may render the agent liable to third persons as a partner 2 B & C 401. for the contract does not unite the property of the parties, the parties do not intend that ~~a~~ common stock shall be created in which the agent shall have an interest.

